



Oregon Water Resources Congress



September 1, 2021

Michael Wood, Administrator Oregon OSHA  
C/O Technical Section ([tech.web@oregon.gov](mailto:tech.web@oregon.gov))  
350 Winter St NE, 3rd Floor  
PO Box 14480  
Salem, OR 97309

**RE: Heat Illness Prevention Rulemaking**

Dear Administrator Wood,

We respectfully request that you accept this letter as public comment in the permanent rulemaking process for heat illness prevention. We have also included a marked-up copy of the current draft rule that address the points made in this letter as well as comments on other smaller concerns.

The Special Districts Association of Oregon (SDAO) serves over 950 local governments in the state of Oregon representing 37 types of special districts. These districts are diverse in function and provide services to the citizens of Oregon including airports, domestic water and sewer, drainage and irrigation, health services, library, mass transit, parks and recreation, people's utility districts, public safety, roads, soil and water conservation, and more. SDAO administers the Special Districts Insurance Services (SDIS) insurance pool which provides all lines of insurance coverage to the members of SDAO. Our member districts serve the entire population of the state and provide many essential services.

SDAO members are very supportive in protecting their workers and we feel confident that our membership was already doing the right thing by their employees when it comes to excessive heat exposures. Many of our members are also struggling with how to afford to implement these measures along with other new requirements such as your new protection from wildfire smoke rule and vaccination requirements that are placing additional workload and financial challenges on our districts. It is also worth noting that special districts were completely left out of the American Rescue Plan (ARP) funding.

SDAO has been participating in the Rule Advisory Committee (RAC) for heat illness prevention since it began in March of this year. Once draft language started to be developed, we put together a working group of our members to get their input on the draft language. That group has been meeting and communicating on the rule since May and has concerns with the language and actual implementation of it.

### **Temporary Rules**

SDAO was also invited by OR-OSHA into a small group that was formed to participate in the emergency/temporary rulemaking meetings for heat illness prevention. This whole process was rushed, and it appeared the agency had already determined what was going to be in these rules prior to engaging this group. Meetings were scheduled with limited notice to the participants, about 24 hours' advanced notice.

There were strong suggestions from the majority in the first meeting that indoor work environments should not be included in the temporary rule. This and other suggestions from most of the committee members were not considered and the committee was told the agency would not be making any significant changes to the draft language that was provided prior to the second and last meeting.

The time frames for this temporary rule were troublesome, to say the least. These meetings were scheduled quickly with little notice. Those attending these meetings were not given adequate time, to digest and comment on the draft rule language. Employers were left scrambling to develop and conduct training to meet OR-OSHA's timeline.

### **Heat Illness Prevention Permanent Rulemaking**

Although the temporary rule is a vast improvement from the previous draft of the permanent rulemaking, it still has burdensome and infeasible provisions. It also includes a large portion of the workforce that is not in a situation where they are at heightened risk of heat-related illnesses. The latest draft language for the permanent rulemaking that was released on August 17<sup>th</sup> is significantly different than previous drafts and the temporary rule. This latest draft has only compounded the difficulty of implementing this rule. Additionally, with less than 6 weeks left until OR-OSHA's deadline to propose a rule, it leaves little time to solicit additional comments from the RAC with these significant changes.

#### Those workers not conducting physical labor should be exempt from this rule

Employees that are not engaged in physical labor should be exempt from the rule. The current draft of the permanent rule captures this in first listed exception in section (1). We implore the Agency to ensure that our concerns with the temporary rule do not find their way into the permanent rule.

Our concern with the temporary rule, is it includes a person sitting at their desk in an un-air-conditioned office or for a teacher teaching in a school classroom. This type of non-physical labor work is at no heightened risk of a heat-related illness. There is little you could do for these positions to give them additional rest in the shade.

Additionally, under the temporary rule, employers would be required to set up tents outside for open air shade, where, perhaps, temperatures exceeded those in the office space. If that shaded area does not allow the body to cool, an employer's only option is to cease work and send workers home without further pay. While OR-OSHA consistently asserts that it does not require employers to stop work or close, the temporary rule effectively requires such actions if an employer does not have the financial resources (or perhaps control over the office building) to install air conditioning.

It seems unreasonable to apply this rule to indoor facilities where employees are not subjected to physical labor but rather engage in sedentary work and it is our recommendation that this be left out of the permanent rule.

#### Shade is not always the answer

Consideration should be given to allow a hazard assessment to be conducted where an employer can implement practical engineering and administrative controls in lieu of Section (3) Access to shade. Having a hard line drawn on providing shade for our members is burdensome in many situations and infeasible in others. A lot of our members' work is mobile, and often they are not at any one site for extended periods of time. This is frequently coupled with not having air conditioning in their vehicles. Equally effective measures could be implemented by allowing the latitude of engineering and administrative controls. These could include:

- Shade
- Cooling vests
- More frequent rest breaks
- Lighter workload
- Shifting work schedules to cooler parts of the day

In the RAC meeting, the voices supporting this shade requirement appear to be coming only from the agriculture representatives. If there is such a need in that sector, this requirement should only be put in that division of the rule.

#### A single employee organization cannot comply with the high heat provisions

The high heat procedures section does not lend itself to be complied with for single employee organizations. SDAO has numerous members that could simply not comply with this section, as the single employee does not have a supervisor to observe them or with whom the employee can communicate.

### Acclimatization simply does not work for all areas of the state

The current draft language related to acclimatization simply will not work for areas of the state that do not have consistently high temperatures. This language would mean shortened workdays any time that the temperature reaches or exceeds 80 degrees. If you work on the coast or even the Willamette Valley, we rarely have sustained temperatures above 80 degrees for 7 to 14 days. This means employers must restart the acclimatization process every time the temperature goes up.

This would again mean employees are being sent home without pay if the employer does not have work for the employees in a climate-controlled environment. This topic should be left for training, so employees can learn about acclimatization, what their personal risk factors are for heat-related illness and how they can mitigate those personal risk factors.

### The written heat illness prevention plan will not create a safer or healthier workplace

The requirement to have a written heat illness prevention plan is nothing more than a paperwork burden and will not improve health and safety beyond what the rule will already require. Additionally, in the current draft of the rule, there are additional requirements imposed on the employer that have no place in this section of the rule and other topics that do not mirror language imposed by the draft rule, that just serve to cause confusion for employers trying to implement them.

Of particular concern in this section is the language that employers must address how they are “Providing a cool, climate-controlled area where heat-affected employees may take their breaks and for recovery when signs and symptoms of heat-related illnesses are recognized.” This is simply not realistic. How is a school supposed to afford to put air conditioning in every one of their schools? How can a fire district provide a climate-controlled area when they are on an emergency scene and none of their apparatus have air conditioning? This is an infeasible requirement and needs to be removed from the rule.

The training provisions under the current draft are excessive and cumbersome. There are currently 14-line items of topics that employers must train their staff on. Employers are being asked to train their employees on nonoccupational factors that they have no control over and how to monitor weather reports, as two examples. It is recommended that the training requirements be pared down to those that will be effective in preventing heat-related illnesses.

### **Conclusion**

In conclusion and considering all the above, we request that OR-OSHA begin with the temporary rule as a starting point on the draft permanent rule. If we were starting from the temporary rule, our requests would include the following five items:

- An exemption for those workers that are not conducting physical labor.
- Removal of the shade requirement, and in its place allow for a risk assessment so that employers can have the flexibility to apply practicable engineering and administrative controls to mitigate and control the hazard.

- Remove or change language that cannot be complied with by a single employee organization. This language is mainly found in the high heat procedures section.
- Remove the acclimatization section as it is not feasible for most Oregon employers to comply with.
- Remove the requirement that Heat Illness and Prevention Plans provide for a climate-controlled area on or near jobsites.

In partnership with the following associations, we respectfully thank you for your time in reviewing our concerns.

Oregon Water Resources Congress  
Oregon Public Ports Association  
Oregon People's Utility District Association  
Oregon Recreation & Park Association  
Oregon Safety and Health Section OFCA  
Oregon Association of Conservation Districts

Sincerely,

A handwritten signature in black ink that reads "Frank Stratton". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Frank Stratton

SDAO Executive Director

437-002-XXXX Heat Illness Prevention

(1) Scope and Application

(a) This standard applies to all places of employment where the climate is not adequately controlled with a cooling system. This standard applies to the control of heat-related injuries and illnesses. When any other applicable standard addresses other hazards that may be present, you must comply with the provisions of that standard and this standard. Where the requirements of one standard are more restrictive than the other, follow the more stringent requirements.

EXCEPTION:

- This standard does not apply when an employee is not required to perform work activities outdoors where the ambient air temperature equals or exceeds 80 degrees Fahrenheit and the relative humidity equals or exceeds 40% for more than 15 minutes in any sixty-minute period. This exception may be applied once every hour during the work shift.
- Exposure to heat that is only generated from the work process is not subject to this standard. When the only exposure to heat is from the work process, follow the requirements of 437-002-0144(2).

**Commented [TD1]:** Would recommend using the heat index throughout this rule rather than temp and humidity.

(2) Definitions

**Acclimatization** - temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to it. Acclimatization peaks in most people within four to fourteen days of regular work for at least two hours per day in the heat.

**Commented [TD2]:** If acclimatization is to be in the rule (see comments in that section) recommend we use the definition out of the temp rule "(a) **Acclimatization** - temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to it."

**Drinking water** – Potable water that is suitable to drink and that is cool (66°F -77°F) or cold (35°F - 65°F). Drinking water packaged as a consumer product and electrolyte-replenishing beverages that do not contain caffeine (for example, sports drinks) are acceptable substitutes, but should not completely replace the required water.

**Heat Illnesses** - medical conditions resulting from the body's inability to cope with a particular heat load, and includes heat cramps, heat exhaustion, heat syncope and heat stroke.

**Relative humidity** – the amount of water vapor present in air expressed as a percentage of the amount needed for saturation at the same temperature

**Shade** - blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person inside it, unless the car is running with a working air conditioning. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use.

(3) Access to shade

(a) Establish and maintain one or more shade areas when:

(A) The outdoor temperature in the work area exceeds 80 degrees Fahrenheit; or

(B) When requested by an employee.

(b) A shade area must meet the following:

(A) The shade area must either be open to the air or provide mechanical ventilation for cooling.

(B) The amount of shade present must be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade.

(C) The shade must be located as close as practical to the areas where employees are working.

(D) Shade present during meal periods must be large enough to accommodate the number of employees on the meal period that remain onsite.

(c) If trees or other vegetation are used to provide shade (such as in orchards, or forests), ensure the thickness and shape of the shaded area provides sufficient shadow to protect employees.

(d) Where providing access to shade is not safe or feasible (e.g., during high winds), employers must identify and implement steps, in writing, that will be taken to provide alternative cooling measures with equivalent protection as shade.

Exceptions to paragraphs (3)(a) and (3)(b) :

(1) When a shade structure or other shade present on a continuous basis is not feasible at the worksite, develop and implement alternative procedures for providing access to shade that meets the requirements of (3)(b).

(4) High Heat Procedures.

(a) Implement high heat procedures when the ambient outdoor temperature equals or exceeds 90 degrees Fahrenheit. These procedures must include the following to the extent practical:

(A) Employers must ensure that effective communication, in a language readily understood, by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a cell phone, may be used for this purpose only if reception in the area is reliable.

**Commented [TD3]:** Recommend replacing the shade section with a hazard assessment that allows the employer to implement practical controls.

**Commented [TD4]:** Concerned about the potential liability impact this could have related to employment practices. Recommend removal of this item if above comment about removing this section is not taken into consideration.

**Commented [TD5]:** This appears to be a high bar to meet and does not seem like it would be feasible in many situations. One example I can think of is a fire district responding to a car accident. Not all fire trucks have AC, it's not feasible in this short duration event to meet this standard.

**Commented [TD6]:** This seems duplicative with the above. It is also confusing language, if it's not feasible to provide shade in the first place, how are you supposed to provide alternative means to shade?

**Commented [TD7]:** Most of this remains infeasible for single employee organizations.

**Commented [TD8]:** This definition of what high heat is, should be included in the above line item of section (4) high heat procedures. As it is written you would not know when you had to implement section (4) (b&c) as high heat is not defined for those two line items.

(B) Employers must ensure that employees are observed for alertness and signs and symptoms of heat illness and monitored to determine whether medical attention is necessary by implementing one or more of the following:

- (i) Regular communication with employees working alone, such as by radio, cellular phone, or other alternative means, or
- (ii) Create a mandatory buddy system, or
- (iii) Implement other equally effective means of observation or communication.

(b) Employers must designate and equip one or more employees on each worksite as authorized to call for emergency medical services, and must allow other employees to call for emergency services when designated employees are not immediately available (such a practice supplements existing requirements to ensure that emergency medical care is immediately available in all workplaces).

(c) Employers must ensure that each employee takes a minimum ten-minute preventative cool-down rest period in the shade at least every two hours, regardless of the overall length of the shift.

**Commented [TD9]:** This is confusing language as the first item below allows you to do this through communication, which is not observation in my mind.

**Commented [TD10]:** Recommend adding into this line item "for that portion of the day when the heat index is at our above 90 degrees".

**Note:** The preventative cool-down rest period required by this paragraph may be provided concurrently with any other meal or rest period required by policy, rule or law if the timing of the preventative cool-down rest period coincides with the otherwise required meal or rest period. Except when such a rest period coincides with the existing unpaid meal break, the preventative cool-down rest period is a work assignment and must be compensated accordingly.

**Commented [TD11]:** The purpose of this rest break is to cool down. If that can be done on an unpaid lunch break, doesn't that still meet the intent of what we are trying to accomplish?

(5) Drinking water

- (a) Ensure there is [access to](#) an adequate supply of drinking water that is either cool or cold.
- (b) Ensure enough drinking water is adequate to provide at least 32 ounces to each employee every hour on every shift.
- (c) Encourage employees to drink plenty of water.

**Commented [TD12]:** There were comments in the last RAC meeting to change this language back to previous burdensome and confusing language. We like what is currently written and believe it is clear that the employer has to ensure water is available to all employees. To improve and help address the one comment about having water but supervisors would not allow employees to go get it, I think you could add the word "access" to the first item to address that concern.

(6) Emergency Response Procedures

(a) Develop and implement an effective emergency response plan per OAR 437-002-0042. Agricultural employers, follow OAR 437-004-0450. In addition to the requirements of Emergency Response Plan, the procedures must include and address the following:

- (A) Responding to signs and symptoms of possible heat illness, including but not limited to first aid measures and how emergency medical services will be provided.
  - (i) If a supervisor observes, or any employee reports, any signs or symptoms of heat illness in any employee, the supervisor must take immediate action appropriate to the severity of the illness.

- (ii) If a supervisor observes signs or an employee reports symptoms of heat illness, the employee must be relieved from duty and provided with a sufficient means to reduce body temperature. Examples include, but not limited to: cooling blankets, cooling vests, and fans.
- (iii) If the signs or symptoms are indicators of severe heat illness (such as, but not limited to, decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior or convulsions), immediately implement the emergency response procedures.
- (iv) An employee exhibiting signs or symptoms of heat illness must be monitored and must not be left alone or sent home without being offered onsite first aid and/or being provided with emergency medical services in accordance with the employer's procedures.

- (b) Contacting emergency medical services and, if necessary and instructed to do so by the medical professionals, transporting employees to a place where they can be reached by an emergency medical provider.
- (c) Ensuring that, in the event of an emergency, clear and precise directions to the work site is provided for first responders to quickly navigate to the location of the worker.

(7) **Acclimatization Plan.**

- (a) Develop and implement effective acclimatization procedures. These procedures must include:
  - (A) A schedule for gradually increasing exposure time over a period of 7 to 14 days.
- (b) For new workers, the work schedule must be no more than 20% of the usual duration of work in the hot environment on day 1 and a no more than 20% increase on each additional day.
- (c) For workers who have had previous experience with the job, the acclimatization regimen must be no more than 50% of the usual duration of work in the hot environment on day one, 60% on day two, 80% on day three, and 100% on day four.

(8) **Heat Illness Prevention Plan.**

- (a) The employer must develop, implement, and maintain, an effective heat illness prevention plan, in writing. The plan must be made available at the worksite to employees and to Oregon OSHA upon request. The plan must, at a minimum, contain:
  - A. Training employees about the hazards of heat, steps to prevent heat-related illnesses, how to recognize the symptoms of dehydration, and how to respond to suspected heat-related illnesses in others.
  - B. Providing adequate amounts of cool, potable water in work areas.
  - C. Providing employees frequent opportunities and encouragement to stay hydrated by drinking water.

**Commented [TD13]:** This is not feasible for those areas of the state that do not have sustained heat. You're going to be battling this every time the heat index reaches 80 degrees. This provision is essentially going to shorten the workday for a vast majority of the state every time the heat index reaches 80.

We recommend not having this section in the rule.

**Commented [TD14]:** This is a paperwork burden that does not increase the effectiveness of the provisions of this rule or the health and safety of our employees.

- D. Providing a cool, climate-controlled area where heat-affected employees may take their breaks and for recovery when signs and symptoms of heat-related illnesses are recognized.
- E. Providing adequate space in shaded areas for affected employees at hot worksites where they may take their breaks and cool off.
- F. Implementing a work/rest regimen if necessary to keep employees safe.
- G. Implementing heat acclimatization procedures for new employees or employees returning to work from absences of three or more days.
- H. Acclimatization and training about health conditions aggravated by heat.

**Commented [TD15]:** This is not realistic in all work settings and is a nonstarter to have in the rule.

**Commented [TD16]:** We recommended above replacing the shade section with a hazard assessment. As the draft is currently written, this here would need to include the same provisions as section (3) for those times when shade is not feasible.

**Commented [TD17]:** You already have a provision for rest breaks in the rule in section (4) this should mirror that requirement. This confuses it with different language.

**Commented [TD18]:** We recommended above to remove the acclimatization section, but this confuses that portion of the rules by putting wholly different information and requirements than that section.

**Commented [TD19]:** If you want training on this, it should be in the training section not here.

**Commented [TD20]:** Shouldn't this be affected employees? This would require employers to train employees that are not subject to the rule, or at least cause confusion on whether they have to be trained.

(9) Training

- (a) Supervisor and employee training. Train all employees, including new employees, supervisory, and non-supervisory employees in the following topics, in a language readily understood, before employees begin work that should reasonably be anticipated to expose employees to the risk of heat illness:

- (A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.
- (B) The employer's procedures for complying with the requirements of this standard, including, but not limited to, the employer's responsibility to provide water, provide heat index information (including the risks to experiencing a heat-related illness), shade, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without fear of retaliation.
- (C) The importance of frequent consumption of small quantities of water, up to 32 ounces per hour, when the work environment is hot and employees are likely to be sweating more than usual in the performance of their duties.
- (D) The concept, importance, and methods of the acclimatization plan pursuant to the employer's procedures under paragraph (7).
- (E) The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and/or emergency responses to the different types of heat illness, and in addition, that heat illness may progress quickly from mild symptoms and signs to serious and life-threatening illness.
- (F) The importance to employees of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers.
- (G) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

**Commented [TD21]:** Recommended removing section (7) and leave the training component as general information on acclimatization.

- (H) The employer's procedures for contacting emergency medical services, and if necessary and instructed to do so by the medical professionals, for transporting employees to a point where they can be reached by an emergency medical service provider.
- (I) The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. These procedures must include designating a person to be available to ensure that emergency procedures are invoked and followed when appropriate.
- (J) The effects of nonoccupational factors (drugs, alcohol, obesity, etc.) on tolerance to occupational heat stress.
- (K) The added heat load caused by exertion, clothing, and personal protective equipment.
- (L) The role, expectations, and responsibilities of the monitor.
- (M) How to monitor weather reports and how to respond to hot weather advisories.
- (N) Ensure all employees are trained annually.

**Commented [TD22]:** This is already covered in (A)

**Commented [TD23]:** The rule does not explicitly require a monitor, nor is it possible for a single employee organization to have a monitor. Not sure the purpose or intent of this line item.

**Commented [TD24]:** This seems very excessive. The rule already has action levels. An employer should be able to decide how they are going to implement these requirements and training all staff on this is burdensome.

**Commented [TD25]:** We are to train all employees that they are to be trained annually? The way the draft is written that is not required, maybe this should be in (a) of this section?