



OSHA 30/30®

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

www.khlaw.com/osha3030

OSHA's Proposed Heat Stress Standard: How it Impacts Your Worksite

July 24th, 2024

Manesh Rath

Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has testified before Congress on OSHA matters and he has served as lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

Mr. Rath served two terms on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016 through 2024 (and in 2023, selected in his field as Lawyer of the Year); selected by Super Lawyers 2016 -2023; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



Manesh Rath
Partner
rath@khlaw.com
202-434-4182

Taylor Johnson



Taylor Johnson is an environmental lawyer specializing in the area of environmental regulation of products, including chemical control, pesticides, energy efficiency regulation, and importantly, domestic and international transportation of hazardous materials. Mr. Johnson also advises clients on community-right-to-know laws, Proposition 65, occupational safety and health matters, and supports a wide variety of commercial tort and other litigation issues.

Mr. Johnson has special expertise in the area of hazardous materials transport, including enforcement defense and compliance counseling. Mr. Johnson helps companies secure competent authority approvals, special permits, and letters of interpretation from regulatory authorities around the world. He has also prepared successful petitions to PHMSA on behalf of shippers seeking regulatory relief.

Prior to joining Keller and Heckman, Mr. Johnson promoted the development of energy and environmental legislation and policy at the state level.



Topics to Be Discussed

- ◆ Background of Proposed Rule: *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*
- ◆ Application and Scope
- ◆ Heat Injury and Illness Prevention Plan
- ◆ Identifying Heat Hazards
- ◆ Initial Heat Trigger vs. High Heat Trigger: Requirements
- ◆ Training and Recordkeeping
- ◆ What Employers Should Do

Background

- ◆ **October 27, 2021:** Advanced Notice of Proposed Rulemaking and the start of the public comment period
- ◆ **May 3, 2022:** Public stakeholder meeting with over 1,300 attendees
- ◆ **May 3, 2023:** Presentation of recommendations from the Heat Injury and Illness Prevention Workgroup of the National Advisory Committee on Occupational Safety and Health (NACOSH)

Background

- ◆ **August 25, 2023:** OSHA initiated the Small Business Regulatory Enforcement Fairness Act (SBREFA) process
- ◆ **April 24, 2024:** OSHA presented the framework for the proposed rule to the Advisory Committee on Construction Safety and Health (ACCSH)
- ◆ **May 15, 2024:** OSHA held a listening session with tribal representatives regarding the rulemaking
- ◆ **July 2, 2024:** OSHA released the proposed rule: *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*

Scope and Applicability

- ◆ New proposed rule applies to all employers
- ◆ The following activities and organizations are exempt:
 - ◇ Activities for which there is no **reasonable expectation** of exposure at or above the initial heat trigger (80°F Heat Index OR wet bulb globe temperature equal to the NIOSH Recommended Alert Limit)
 - ◇ Short exposures at or above initial heat trigger for 15 minutes or less in any 60-minute period
 - ◇ Emergency response activities
 - ◇ Activities performed indoors or in vehicles where air-conditioning consistently keeps the ambient temperature below 80°F
 - ◇ Telework



Identifying Heat Hazards: Outdoor Work



- ◆ Tracking local heat index forecasts provided by the National Weather Service or a reputable source, or
- ◆ Calculate your own Heat Index, or
- ◆ Wet bulb globe temperature
- ◆ Conditions should be monitored with **sufficient frequency** to determine employees' exposure to heat

Identifying Heat Hazards: Indoor Work

- ◆ Applies if reasonable expectation that employees are or may be exposed to heat at or above the initial heat trigger
- ◆ Employer must develop Heat Injury & Illness Prevention Plan (HIIPP)
 - ◇ Must include a protocol for monitoring
 - ◇ Whenever there is a change in production, processes, equipment, controls, or substantial increase in outdoor temperature – reevaluate and update monitoring plan



Initial Heat Trigger vs High Heat Trigger: Requirements



Initial Heat Trigger (IHT) Requirements

- ◆ IHT Threshold: 80°F Heat Index or WBGT equal to the NIOSH RAL
- ◆ Cool drinking water: readily available and with sufficient quantity (1 quart/hour/employee)
- ◆ Designated break areas (artificial or natural shade outdoors; A/C or fans indoors)
- ◆ Acclimatization for new and returning employees (away for more than 14 days)
- ◆ Encourage paid rest breaks if needed

High Heat Trigger (HHT) Requirements

- ◆ HHT Threshold: 90°F Heat Index or WBGT equal to NIOSH REL
- ◆ All IHT requirements plus:
- ◆ Minimum 15-minute paid rest break at least every two hours
- ◆ Observation for signs/symptoms of heat-related illnesses
- ◆ Hazard Alerts
 - ◇ Employers must brief employees about emergency procedures, water locations, and to take breaks

Heat Injury & Illness Prevention Plan (HIIPP)



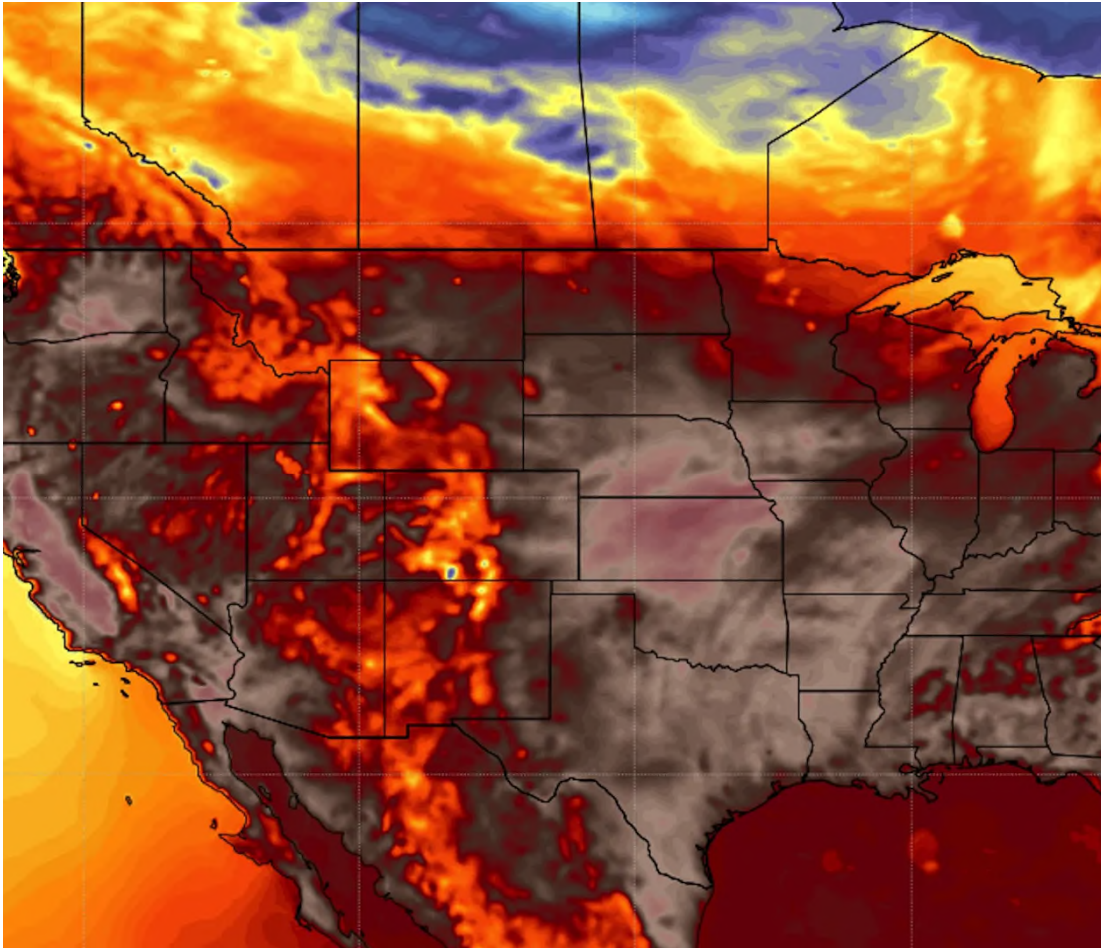
- ◆ Employers for which the standard applies must develop and implement a worksite heat injury and illness prevention plan (HIIPP)
- ◆ The HIIPP must include:
 - ◆ A list of all types of work activities covered by the plan
 - ◆ All policies necessary to comply with Heat Standard requirements
 - ◆ Identification of the heat metric (i.e., Heat Index or wet bulb globe temperature) the employer will monitor

Heat Injury and Illness Prevention Plan (HIIPP)

- ◆ Employers must designate at least one heat safety coordinator to monitor compliance with the HIIPP
 - ◇ The heat safety coordinator must have the authority to ensure the HIIPP procedures are followed
- ◆ When creating the HIIPP, employers must include input from non-managerial employees and/or employee representatives
- ◆ The HIIPP must be understandable and accessible
- ◆ HIIPP must be in writing if more than 10 employees



Heat Injury and Illness Prevention Plan (HIIPP): Evaluation Requirements

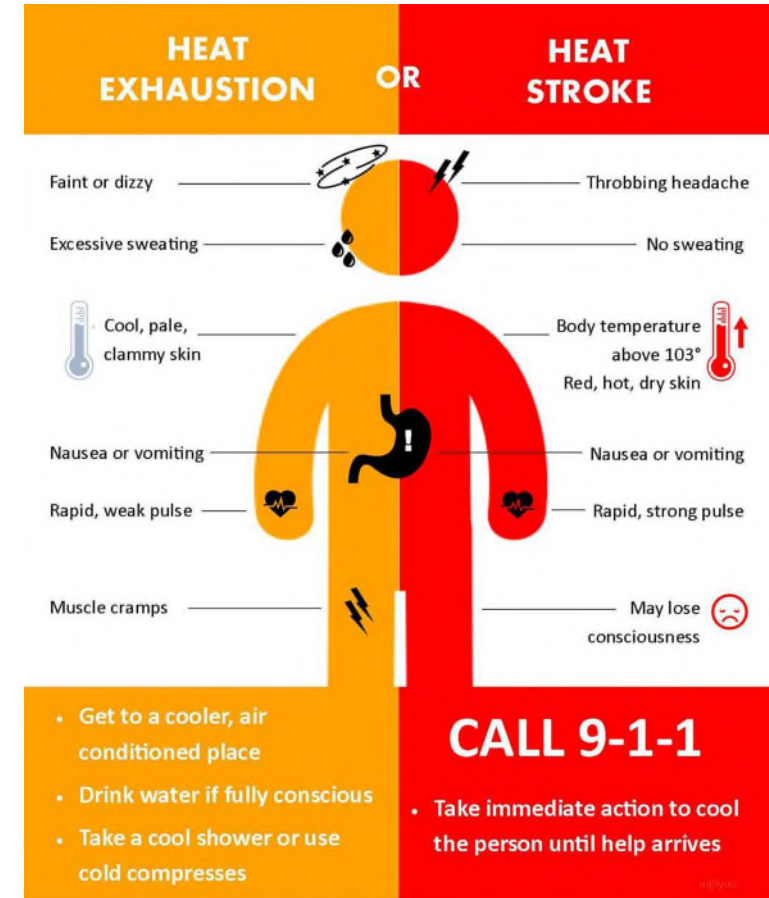


- ◆ Employers must review and evaluate the effectiveness of their HIIPP whenever their employees' heat-related illness or injury results in:
 - ◆ Days away from work
 - ◆ Medical treatment (beyond first aid)
 - ◆ Unconsciousness
 - ◆ Death
- ◆ Absent all these situations, the HIIPP must be reviewed and assessed annually

Employee Training

◆ Initial Training

- ◆ Before working at or above the IHT, employer must train each employee on:
 - Heat stress hazards
 - Signs and symptoms of heat-related injuries and illnesses
 - Risk factors for heat-related injury or illness
 - Importance of taking rest breaks in designated break areas
 - Drinking water frequently
 - Policies and procedures outlined in the HIIPP



Supervisor Training



- ◆ Supervisor Training
 - ◇ Employers must ensure each supervisor responsible for employees working at or above IHT receives training on:
 - Policies and procedures on IHT and HHT days
 - The HIIPP
 - Observation, recognizing symptoms
 - Procedures if employee displays signs of heat related illness

Additional Training

- ◆ Annual Refresher Training
 - ◇ Employers must ensure that each employee receives ***annual*** heat-safety refresher training
 - For employees that work outdoors, this training must occur before the start of heat season
- ◆ Supplemental Training
 - ◇ Additional training is required in the event of:
 - New job tasks that affect employee's exposure to heat at work
 - Changes in HIIPP policies or procedures
 - An occurrence of a heat-related injury or illness in the worksite

What Employers Should Do

- ◆ Monitor for publication in *Federal Register*, prepare to submit comments
- ◇ Determine impact at your organization from:
 - Continual re-evaluation of plan
 - Annual and continual training
 - Recordkeeping
- ◆ Impact of *Loper Bright*
- ◆ Develop heat stress management plan
- ◆ Develop data and heat measurements at worksites prior to determining the applicability of the proposed standard






OSHA 30/30[®]

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

www.khlaw.com/osha3030



Please join us
at 1:00 p.m., Eastern Time
August 21, 2024
www.khlaw.com/OSHA3030



Please join us at 10:00 a.m. Eastern U.S.
August 28, 2024
www.khlaw.com/REACH-3030



Please join us at 1:00 p.m. Eastern U.S.
August 14, 2024
www.khlaw.com/TSCA-3030



Thank You

Stick around for Off the Record

Manesh Rath

Partner

1001 G Street NW Ste. 500W

202.434.4182

rath@khlaw.com



Taylor Johnson

Associate

1001 G Street NW Ste. 500W

202.434.4255

johnsont@khlaw.com

