

# CLC UPDATE

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California Legislative Conference of the Plumbing, Heating and Piping Industry

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## **Cal/OSHA Burdens Employers Again – Changes in Heat Illness Prevention Standards**

Despite opposition from a coalition of construction employers and others, California's Occupational Safety & Health Standards Board (OSHSB) recently approved revisions to California's unique heat illness regulations. The OSHSB sent the revised regulations to the Office of Administrative Law for final approval. The OSHSB asked for an accelerated effective date of May 1, 2015, rather than the July 1, 2015 operative date that would have happened without the special request. We anticipate that the regulations will be approved, so contractors will need to prepare in advance.

We had forcefully advocated for a reasonable and balanced approach on this matter over the past year. During that process we were able to secure some concessions, such as, the distance from employees requirements for water (400') and shade (700') being dropped. In addition, the trigger temperature for the onset of "high heat procedures" was not reduced as proposed to 85 degrees Fahrenheit, but remains at 95 degrees Fahrenheit.

We have requested a clarification document from Cal/OSHA regarding some of the grey areas to assist with compliance. We will provide that document once we receive it.

It's important to remember that these standards only apply to "outdoor places of employment."

Some of the changes include:

- Water must be "fresh, pure and suitably cool" and located as close as practicable to where employees are working, with exceptions when employers can demonstrate infeasibility.
- Shade must be present at 80 degrees, instead of the current 85 degrees, and accommodate all employees on recovery or rest periods, and those onsite taking meal periods.
- Employees taking a "preventative cool-down rest" must be monitored for symptoms of heat illness, encouraged to remain in the shade and not ordered back to work until symptoms are gone. Employees with symptoms must be provided appropriate first aid or emergency response.
- High-heat procedures (which will remain triggered at 95 degrees) shall ensure "effective" observation and monitoring, including regular communication with employees working by themselves.
- Emergency response procedures include effective communication, response to signs and symptoms of heat illness and procedures for contacting emergency responders to help stricken workers.

Below are links to the amended standards and the program summary. Attached is a comprehensive review of the changes vs. the current standards.

LINK1: [https://www.dir.ca.gov/oshsb/documents/Heat\\_illness\\_prevention\\_txtbrdconsider.pdf](https://www.dir.ca.gov/oshsb/documents/Heat_illness_prevention_txtbrdconsider.pdf)

LINK 2: <https://www.dir.ca.gov/dosh/heatillnessinfo.html>

**Cal/OSHA Heat Illness Prevention Regulations  
Tracked Changes:**

<b>TITLE 8, SECTION 3395 EXISTING LANGUAGE:</b>	<b>REVISED LANGUAGE:</b> <i>(revised language in italics)</i>	<b>CHANGE:</b>
<p>(b) Definitions:</p> <p>Shade: "Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions."</p>	<p>"Shade...conditions <i>and that does not deter or discourage access or use.</i>"</p>	<p>Text added to address possible physical or other accessibility issues.</p>
<p>(c) Provision of water: "Employees shall have access to potable water....as applicable."</p>	<p>"Employees shall have access to potable water...as applicable, <i>including but not limited to the requirements that if be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working.</i>"</p>	<p>This new requirement that water be fresh, pure and suitably cool could prove to be problematic in the field. Beyond the standard for potability, there does not appear to be a universally recognized standard for the new requirement.</p>
<p>(d) Access to shade.</p> <p>(1) "Shade required to be present when the temperature exceeds 85 F degrees."</p> <p>"When the outdoor temperature in the work area exceeds 85 F degrees the employer..."</p> <p>"The amount of shade present shall be at least enough to accommodate 25% of the employees on the shift at</p>	<p>"Shade required to be present when the temperature exceeds <i>80 F degrees.</i>"</p> <p>"When the outdoor temperature in the work area exceeds <i>80 F degrees</i> the employer..."</p> <p>"The amount of shade present shall be at least enough to accommodate <i>the number of employees on recovery or rest period,...</i>"</p> <p>"The <i>shade</i> shall be located..."</p> <p><i>"Subject to the same specifications, the</i></p>	<p>The temperature triggers for both provisions were lowered by 5 F degrees.</p> <p>The reference to the amount of shade present has been revised to eliminate the percentage of the workers on any given shift to the number of employees on a recovery or rest period.</p> <p>The reference to the 'shade area' has been slightly revised to refer only to shade.</p> <p>The language referring to shade for those employees on meal periods is new.</p>

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TITLE 8, SECTION 3395 EXISTING LANGUAGE	REVISED LANGUAGE <i>(revised language in italics)</i>	CHANGE
any time." "The shade area shall be located..."	<i>amount of shade present during meal periods shall be at least enough to accommodate the number of employees on the mea period who remain onsite."</i>	
(d)(2) "Shade required to be available when the temperature does not exceed 85 F degrees. When the outdoor temperatures in the work area does not exceed 85 F degrees employers shall..."	"Shade <i>shall</i> be available when the temperature does not exceed <i>80 F degrees</i> . When the outdoor temperature in the work area does not exceed <i>80 F degrees</i> employers shall..."	The term 'required' has been changed to 'shall'.  The temperature triggers for shade to be available and at an employee's request has been lowered from 85 F degrees to 80 F degrees.
(d)(3) "Employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the need to do so to protect themselves from overheating."	"Employees shall be allowed and encouraged to take a <i>preventative</i> cool-down rest in the shade when they feel the need to do so to protect themselves from overheating."  <i>"An individual employee who takes a preventative cool-down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time needed to access the shade"</i>	The term 'preventative' has been added to the term 'cool-down'.  The additional italicized language is new and important to understand as it requires monitoring of employees including asking them if they are experiencing symptoms, requires that employees shall not be returned to work until such symptoms have abated and adds language that recognizes that an employee may have to spend time to get to shade in addition to the minimum 5 minute rest.
(d)(4)	New language. <i>"If an employee exhibits signs or symptoms of heat illness while taking a preventative cool-down rest or during a</i>	This language now states in the body of the regulation what was previously implied - when necessary provide either first aid or summon

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	<i>preventative cool-down rest period, the employer shall provide appropriate first aid or emergency procedures according to subsection (f) of this section."</i>	emergency medical personnel.
(e) High-heat procedures (e)(2) Observing employees for alertness and signs or symptoms of heat illness.	"Observing employees for alertness and signs and symptoms of heat illness. <i>The employer shall ensure effective employee observation/monitoring by implementing one or more of the following: (A) Supervisor or designee observation of 20 or fewer employees, or (B) Mandatory buddy system, or (C) Regular communication with sole employee such as by radio or cellular phone, or (D) Other effective means of observation."</i>	Employers will have to determine how and who will be responsible for meeting the requirements of this sub-section. It is highly recommended that some form of record or documentation be maintained as to how the employer will implement these new requirements.
(e)(3) (Note: the previous (e)(3) has been newly referenced as (e)(4).	New language. <i>"The employer shall ensure effective employee observation/monitoring by... (e)(3) Designating one or more employees on each worksite as authorized to call for emergency medical services, and allowing other employees to call for emergency services when no designated employee is available."</i>	It is recommended that employers ensure that it is clearly understood by all employees who is authorized to "call", and that according to the new language, any employee can call if a designated person is unavailable. When designating one or more employees employers are advised to ensure those employees have working communication devices.
(e)(4) Close supervision of a new employee by a supervisor or designee for the first 14 days of the employee's	This sub-section has been eliminated.	There is new language regarding acclimatization further in the side-by-side analysis.

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employment by the employer, unless the employee indicates at the time of hire that he or she has been doing similar outdoor work for at least 10 of the past 30 days for 4 or more hours per day.		
(e)(5)	New language. <i>"Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary."</i>	<p>It is unclear whether a pre-shift meeting is required prior to every shift, or only when the work will be done in high-heat weather.</p> <p>Cal/OSHA Chief Counsel Amy Martin stated at the close of the February 19, 2015 meeting when <i>(continued from page 4)</i></p> <p>the new revisions were adopted that the Division would be issuing a "guidance document" to provide the employer community clarifying information on various aspects of the revisions.</p>

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<p>(f) Emergency Response Procedures. (Note: the previous (e) High-heat procedures (1) has been replaced with new, and enhanced language)</p> <p>This sub-section is new.</p>	<p><i>The employer shall implement effective emergency response procedures including:</i></p> <p><i>(1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable. If an electronic device will not furnish reliable communication in the work area, the employer will ensure a means of summoning emergency services.</i></p> <p><i>(2) 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></p> <p><i>(A) If a supervisor observes, or any employee reports, any signs or</i></p>	<p>This new language gives employers far more specific, and detailed direction, on emergency response procedures than the pre-existing language. Employers must train supervisors so they understand the new requirements and can demonstrate, if necessary, to a Cal/OSHA inspector that they have procedures, understand them, and are prepared to respond according to the specific situation.</p>

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	<p><i>symptoms of heat illness in any employee, the supervisor shall take immediate action commensurate with the severity of the illness.</i></p> <p><i>(B) 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), the employer must implement emergency response procedures.</i></p> <p><i>(C) An employee exhibiting signs or symptoms of heat illness shall be monitored and shall 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.</i></p> <p><i>(3) Contacting emergency medical services and, if necessary, transporting employees to a place where they can be reached by an emergency medical provider.</i></p>	

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<b>TITLE 8, SECTION 3395 EXISTING LANGUAGE</b>	<b>REVISED LANGUAGE</b> <i>(revised language in italics)</i>	<b>CHANGE</b>
	<i>(4) 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</i>	



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(g) Acclimatization.	<p>New language.</p> <p><i>(1) All employees shall be closely monitored by a supervisor or designee during heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least 80 F degrees and at least ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.</i></p> <p><i>(2) An employee who has been newly assigned to a high heat area shall be closely observed by a supervisor or designee for the first 14 days of the employee's employment.</i></p>	<p>This new language goes far beyond the previous reference for supervisor/employee training in "The importance of acclimatization"</p> <p>It is recommended that employers and their supervisors understand their responsibilities to monitor the weather carefully so as to determine whether their high-heat procedures must be activated during a 'heat wave'.</p>
(h) Training.  (1)(B) "Effective training in the following topics shall be provided...The employer's procedures for complying with the requirements of this standard."	<p>"The employer's procedures for complying with the requirements of this standard, <i>including, but not limited to, the employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without retaliation.</i>"</p>	<p>This sub-section consolidates previous references to providing water, cool-down rest breaks access to first aid in one location in the regulation.</p> <p>It further adds language regarding employee's exercising rights under the standard without retaliation. This is duplicative since employee rights to participate in occupational safety and</p>

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		health matters is found in California Labor Code, Division 5, Part 1, Section 6310.
(1)(D) "The importance of acclimatization"	<i>"The concept, importance, and methods of acclimatization pursuant to the employer's procedures under subsection (i)(4)"</i>	The critical issue is the methods of acclimatization - see the new sub-section (g).
(1)(E) "The different types of heat illness and the common signs and symptoms of heat illness"	<i>" The different types of heat illness and 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."</i>	This revision elaborates on the previous language by specifically mentioning appropriate first aid/emergency responses to the different types of heat illness, and adds what the overwhelming majority of safety and health professionals understand - signs and symptoms can quickly degrade unless appropriate measures are taken.
(i) Heat Illness Prevention Plan  "The employer's procedures for complying with each requirement of this standard required by subsections (f)(1)(B), (G), (H), and (I) shall be in writing and shall be made available to employees and to representatives of the Division upon request."	<i>"The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan may be included as part of the employer's</i>	This new language expands on the previous requirement in addressing the language in which the plan should be drafted and implemented, and affords employers the option of having a separate plan or incorporating the heat plan into their IIPP. It also specifies that the plan shall be available at the worksite, not at an offsite office location, but at the worksite.  And, the revision in one location in the

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	<p><i>Illness and Injury Prevention Plan Program required by section 3203, and shall, at a minimum, contain:</i></p> <p>(1) Procedures for the provision of water and access to shade. (2) The high heat procedures referred to in subsection (e). (3) Emergency Response Procedures in accordance with subsection (f). (4) Acclimatization methods and procedures in accordance with subsection (g)</p>	<p>regulation again summarizes the key provisions of water and access to shade; high heat procedures, emergency response procedures; and acclimatization.</p>