



**National Council for
Occupational Safety and Health**

January 14, 2025

The Honorable Doug Parker
Assistant Secretary of Occupational Safety and Health
U.S. Department of Labor
Washington, DC 20210

Submitted via regulations.gov

Re: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings Proposed Rulemaking

Docket No. OSHA-2021-0009

U. S. Department of Labor
Occupational Safety and Health Administration
29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

RIN 1218-AD39

Dear Assistant Secretary Parker:

We are writing in support of a strong Heat Injury and Illness Prevention rule that will offer robust heat safety protections to both indoor and outdoor workers. We write as organizations that represent, train, and support workers who routinely experience workplace heat exposure. The people who make up our constituencies work as construction and day laborers, on farms and plant nurseries, in warehouses and restaurant kitchens, as meat processors, and in many other low-wage jobs with high-heat hazards.

Many of our organizations have special expertise in worker health and safety. For decades, we have supported workers when they've fallen ill after being made to work under extreme temperatures with no training on heat safety, when they've watched their colleagues pass out and be injured while working without proper heat protection. Most painfully, we've supported workers when they've seen a coworker die from high heat and a disregard for safety. Adding insult to injury, workers in our constituencies also regularly experience retaliation from employers when they try to speak up for heat safety.

The world continues to get hotter due to climate change, with increasingly disastrous consequences. Workers are on the frontlines of this ongoing crisis. Every year, thousands of

workers suffer from heat-related illnesses and injuries. Many die. Yet, as of this writing, only seven states have standards to protect workers from heat -- some of which are limited to only indoor or outdoor workers or workers in a specific sector. In the U.S. South, where workers labor under the highest temperatures and in the most exploitative conditions, no state has adopted a rule protecting workers from heat. And at least two Southern states have promulgated laws that prohibit local ordinances from requiring heat protections like rest breaks.

State and localities that have standards are helpful, but are no substitute for a Federal rule which would apply in all states and protect many more workers. For these reasons we strongly support OSHA's proposal for a standard on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings. More workers will suffer and die from heat illnesses if this rule does not get finalized. We urge you to continue this rulemaking and publish a final standard as soon as possible. Workers' lives are at stake.

As we urge promulgation of this rule, we also suggest the following amendments, which will strengthen it in significant respects.

- 1. Provide stronger protection from retaliation.**

“Worker shifts are six to twelve hours with no time to sit down or drink water. We are tired of relying on our employers to fix the conditions because when we demand justice, they retaliate.” -- NY Dairy Farm Worker

Employers have frequently retaliated against workers in our constituencies who speak up about heat exposure. In Fall 2024, for example, an airport worker at Phoenix's Sky Harbor Airport was terminated after she became a lead advocate for heat protections.

Systemic retaliation against workers who report health and safety concerns is well-documented. Sixty-seven percent of occupational health practitioners surveyed by the U.S. Government Accountability Office for a 2009 report observed workers afraid their employers would take disciplinary action against them for reporting injuries or illnesses.¹ Such fears are heightened for Black, immigrant, and low-wage workers, who experience both higher levels of workplace illness and injury and higher rates of retaliation. A 2009 survey of several thousand low-wage workers found that when workers surveyed reported an injury to their employer, “50 percent experienced an illegal employer reaction—including firing the worker, calling immigration authorities, or instructing the

¹ General Accountability Office. (2009). Workplace Safety and Health: Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data. Available at: <https://www.gao.gov/products/gao-10-10>.

Partners for Dignity and Rights. (2015). “Injured, Ill, and Silenced: Systemic Retaliation and Coercion by Employers against Injured Workers.” Available at: <https://dignityandrights.org/resources/injured-ill-and-silenced-systemic-retaliation-and-coercion-by-employers-against-injured-workers/>.

worker not to file for workers' compensation."² In a 2020 survey by the National Employment Law Project, Black workers "were twice as likely as white workers to report that they or someone at work may have been punished or fired for raising concerns about COVID-19 spreading in the workplace."³

Given the well-documented prevalence of health and safety related retaliation, we recommend OSHA develop an enforceable provision that expressly prohibits employer retaliation for workers who assert their rights under this rule. Such a provision will provide an effective means for protecting affected workers when they seek to access these rights, over and above other protections that may be otherwise available to them under the law.

- 2. Provide workers with the explicit right to stop work as soon as they experience signs of heat-related illness.** Under the OSH Act, workers have a limited right to refuse unsafe work -- however, it isn't easily applied to heat-related illness, which can quickly escalate into a life-threatening situation and must be caught early and treated effectively. Workers who experience the early signs and symptoms of heat-related illness must be explicitly given the right to stop work and take a rest and water break in a cool, shady location. Below is the language we recommend, used in the ASSP/ANSI A10.50 standard to prevent heat-related illness in construction.

- **A10.40- 10.4 Stop Work Authority**

Employees shall be permitted to refuse to do work or enter a location because of a potentially unsafe condition related to heat-related illness or death. Employers shall abate the unsafe condition prior to resuming work activities.

- 3. Clarify that employers must provide workers with training on the employers' Heat Injury and Illness Prevention Plan. Specifically, we recommend that section (h) Training, be revised as follows:—(1) Initial training.** "Prior to any work at or above the heat trigger, the employer must ensure that each employee receives a copy of the employer's Heat Injury and Illness Prevention Plan, and is trained on and understands its contents, as well as the following: (list as in proposed reg)

² Bernhardt, A., et al. (2009). Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities. Available at:

<https://www.nelp.org/app/uploads/2015/03/BrokenLawsReport2009.pdf>.

Partners for Dignity and Rights. (2015). "Injured, Ill, and Silenced: Systemic Retaliation and Coercion by Employers against Injured Workers." Available at:

<https://dignityandrights.org/resources/injured-ill-and-silenced-systemic-retaliation-and-coercion-by-employers-against-injured-workers/>.

³ Tung, I. and L. Padin. (June 2020). "Silenced About COVID-19 In the Workplace." National Employment Law Project. Available at:

<https://www.nelp.org/black-workers-see-higher-rates-employer-retaliation-raising-covid-workplace-safety-concerns/>

“At no point did I get trained on the signs of heat illness, or how to respond if one of us has symptoms. I would sweat so much, feel light headed and dizzy, get blurry vision, fall out of breath, and get nauseous.” - North Carolina Service Worker

4. Include clear requirements for recording and reporting of work-related heat incidents, injuries and illnesses.

“... last year, we lost a colleague at my facility during a sudden heat wave. When we demanded accountability, Amazon didn’t do anything but go into full damage control mode. First they lied and said it wasn’t a workplace incident because his heart stopped the second time in the ambulance, not on the warehouse floor. Then they said that the warehouse never goes about 77 degrees, but we had workers take temperature readings proving that was a lie too.” - Chicago Warehouse Worker

As OSHA acknowledges in the preamble of the proposed standard, work-related heat illnesses are vastly under-recorded and underreported. In 2021-2022, BLS reported only 5,177 cases of “exposure to environmental heat” resulting in days away from work, restricted activity or job transfer (DART cases) nationwide out of nearly 3.4 million DART injury cases. Currently, there are no requirements under OSHA’s injury and illness recording keeping regulations for employers to record heat related illnesses that only require first aid, or temporary short term job restrictions that last less than 1 day. These cases are never captured. And the only heat-related illnesses that must be reported to OSHA are those that result in death or in patient hospitalization.

The final standard should be expanded and strengthened in the following key ways to capture the full extent of work-related heat-illnesses, to prevent these illnesses and improve protections for workers:

- Require all employers covered by the standard to maintain a heat incident log as part of the heat illness and emergency response plan to record all heat-related incidents, (not limited to cases that meet the criteria for an OSHA recordable heat illness or injury) that are identified by the employer or reported by a worker or their representative. The log should be in writing, with workers and their representatives having the right to access and copy the log. A heat incident log would assist employers and workers in identifying heat related hazards and conditions and taking action to institute measures to prevent them in the future.
- Include a definition and criteria for what constitutes a work-related heat illness that must be recorded on the OSHA 300 log, that is broad and covers all the heat-related illnesses outlined in the Health Effects section of the preamble of the proposed heat standard and presumes that these conditions require medical treatment, not simply first aid.

- Require that all work-related heat cases that require emergency care be reported to OSHA within 8 hours as part of OSHA's severe injury reporting regulation.

5. Mandate a minimum schedule for rest breaks at lower heat exposures.

“Sometimes we don’t have time to drink water. We risk our lives because if at any point we lose our balance, then we easily fall onto the ground (from the roof). -- Florida Construction Worker

While OSHA mandates scheduled rest breaks for high heat situations, rest breaks for lower heat exposures (between 80 and 90 degrees Heat Index) are unscheduled and on an “as needed” basis. A mandated minimum schedule for rest breaks would prevent employers from ignoring early signs of heat stress and prevent illnesses from occurring or worsening.

- 6. Specify the training and qualifications required for heat safety coordinators (“competent person”) - and give them the explicit authority to stop work if conditions require it.** OSHA proposes to require a “heat safety coordinator” who has the authority to ensure compliance with the standard. There is no information or proposal on what their qualifications should be or what training would be required. A better approach would be to specify the training and qualifications and designate them as “competent persons” who explicitly have the authority to stop work if conditions require it. Competent persons are required in many OSHA standards, particularly in construction, so many employers are already familiar with this concept.
- 7. Explicitly cover incarcerated workers.** Many carceral facilities lack air-conditioning and incarcerated people are at high risk of heat related-deaths .⁴ Incarcerated people coerced into laboring inside these facilities -- whether “prison housework” or work for outside businesses -- are regularly exposed to temperatures that OSHA has determined should trigger heat protections. So too are incarcerated people assigned to labor on public works projects or as emergency or disaster responders.

We recognize Federal OSHA has at times interpreted the OSH Act as excluding some incarcerated laborers from coverage. The OSH Act itself is silent on the issue, however, and does not statutorily exempt incarcerated workers from its protections. We view the arguments presented in “The Health and Safety of Incarcerated Workers: OSHA's Applicability in the Prison Context” (ABA Journal of Labor and Employment Law, May

⁴ Skartha, J. et al. (2023). Heat-related mortality in U.S. state and private prisons: A case-crossover analysis. PLoS ONE 18(3): e0281389. <https://doi.org/10.1371/journal.pone.0281389>.

2023)⁵ as important, and worthy of OSHA's close consideration and adoption, in whole or in part. Among several other points made, the article contends: "To claim that safety regulations should not apply to penologically useful labor suggests that unsafe conditions, injuries, or death suffered by incarcerated workers should be regarded as part-and-parcel of an individual's punishment. Further, the mandatory nature of many prison labor programs counsels in favor of external regulation: if workers cannot opt out, prison employers exercise almost total control over their workers. This control is particularly concerning in the health and safety context, where prisoners are liable to be subject to disciplinary sanctions for refusing to work based on perceived safety risks."

Given the severe heat stress hazards associated with prison work, OSHA should take the opportunity the proposed regulation presents to revisit, and reverse to the greatest practicable degree, its prior exclusion of vulnerable, incarcerated workers from the Act's protections.

- 8. Extend protections to cover workers performing sedentary activities who are currently excluded.** Paragraph (a)(2)(vi) proposes to exclude workers performing sedentary work activities indoors from heat injury and illness prevention protections. We believe OSHA's proposal of a blanket exclusion of these activities and the workers who perform them likely does not fully account for the health impacts of building-interior temperatures when air conditioning is broken or not present, particularly during high-heat periods in the Sunbelt and the U.S. South.⁶ We suggest sedentary workers should also receive protections triggered by the 80 degree temperature threshold that exists for other workers in the proposed standard.

- 9. Incorporate the Hierarchy of Controls to Ensure the Most Effective Protections for Workers.** The Hierarchy of Controls was developed to ensure that controls implemented to reduce exposures to risks in the workplace were controlled starting with the most effective approaches. Elimination or substitution is the most effective way to reduce risk, though this may not be feasible with most heat exposures. Engineering controls like shielding radiant heat sources is next. Administrative controls like limiting exposure through job rotation or starting work early to avoid the hottest times is next. Lastly PPE is the least effective method to reduce risk as PPE is not completely effective in minimizing exposures, is often worn incorrectly and is rarely properly maintained. The new standard

⁵ Hauptman, M. (2023). The Health and Safety of Incarcerated Workers: OSHA's Applicability in the Prison Context. ABA Journal of Labor and Employment Law. Available at: https://www.americanbar.org/content/dam/aba/publications/aba_journal_of_labor_employment_law/v37/n0-1/jlel-37-1-5.pdf

⁶ Stone, B. et al (2021). Climate Change and Infrastructure Risk: Indoor Heat Exposure During a Concurrent Heat Wave and Blackout Event in Phoenix, Arizona. Urban Climate, V36. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S2212095521000171>

should explicitly incorporate the hierarchy of controls approach to reducing risk to ensure the most effective protections for workers exposed to heat.

10. Mandate engineering controls in indoor spaces.

“I worked at a place that had the AC go out like multiple summers in a row. And it would just get so hot. You would literally start to feel kind of dizzy and you know beads of sweat coming down your feet. It was just miserable. They did give us these fans. It did help, but they didn’t want guests to see them so we couldn’t really position them - they were like on the ground blowing at our feet, not at our bodies. We’d be fanning ourselves with the menu just to try and cool off and they told us specifically not to do that because it didn’t look good to the guests.” -- Arizona Restaurant Worker

“It was 103 degrees in my store. We were told the A/C would get fixed, that didn’t happen. We were told we’d get a portable A/C unit, that didn’t happen. They just gave us fans. Fans would just blow around hot air, that doesn’t make a difference!” - North Carolina Service Worker

For indoor workplaces, the hierarchy of controls should include the implementation of engineering controls such as air conditioning, ventilation, fans, heat exhaust fans and separate areas for workers to cool down.

11. Require the use of the Wet Bulb Globe Temperature as the Heat Trigger Measurement.

Heat stress is a function of 1) ambient temperature, 2) humidity, 3) radiant heat exposures, 4) wind speed, 5) work load, and 6) clothing. The Heat Index, proposed by OSHA as the primary metric, only considers the first two factors. The WBGT alternative also includes radiant heat and wind speed. Radiant heat is a very significant factor in estimating heat load. Wind speed can be an important factor at lower temperatures where it can have a cooling effect. Clothing is primarily a factor for workers who must wear impermeable clothing that does not allow sweat to evaporate. Workload can add significantly to heat stress, particularly for workers in industries like construction where heavy work causes the body to generate significant heat loads added to the external factors. OSHA recognized these factors as important in the proposed rule (e.g. by defining “vapor-impermeable clothing” and requiring policies to mitigate the risk if using them, and recognizing radiant heat as a factor for indoor work environments) but does not include these factors in their measurement requirements (while OSHA allows employers to use the WBGT, it is not required). Requiring the use of the WBGT and including clothing and workload adjustments would result in a much more accurate assessment of risk and prevent many more heat-related illnesses. WBGT monitors have come down in price and are relatively affordable and the costs will drop as well if OSHA were to require them. In addition, the National Weather Service has been testing providing WBGT data available on their website. The new AIHA app also uses the WBGT data.

Thank you for the opportunity to present our views on the proposed rule. With workers' lives and wellbeing on the line, we urge OSHA to consider these suggested improvements to the rule and to publish a final standard as soon as possible.

Sincerely,

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Association of Farmworker Opportunity Programs (National)

AZ AANHPI For Equity (Tempe, AZ)

Beyond the Bars (Miami, FL)

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