

# Now & Next

OSHA Alert

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## Cal/OSHA indoor heat regulation effective immediately

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California employers must now determine whether they are covered by the new rule and what they need to do to comply.



### What's the impact?

- The regulation applies when employees are working indoors and the temperature equals or exceeds 82 degrees Fahrenheit, with some limited exceptions.
- Employers subject to the regulation must move quickly to establish a written heat illness prevention plan.

On July 24, 2024, and after years of delay, the California Division of Occupational Safety and Health's (Cal/OSHA) indoor heat illness prevention rule went into immediate effect, taking the regulated community by surprise. California Labor Code section 6720, signed into law in 2016, required that Cal/OSHA propose an indoor heat regulation to the California Occupational Safety and Health Standards Board (Standards Board) for review and approval by January 1, 2019. Cal/OSHA's work on the rule moved slowly and was further delayed by the pandemic. A notice of rulemaking was eventually issued on March 31, 2023.

A proposed final rule initially came before the Standards Board on March 21, 2024. At that meeting, Cal/OSHA disclosed that the regulation's potential fiscal impact on the public sector had not been fully analyzed and, as a result, the California Department of Finance would not approve the regulation. Despite being informed that the state's Office of Administrative Law (OAL) could not approve the rule without Department of Finance endorsement, the Standards Board, in a show of solidarity with labor, "adopted" the rule anyway. Had the rule been approved and filed in the normal course, it would have become effective on July 1, 2024.

On June 20, 2024, a revised version of the rule, this time excluding various correctional and detention facilities, came before the Standards Board for approval. The rule was adopted by unanimous vote and sent to OAL for approval and filing with the California Secretary of State. Upon adoption, the Standards Board requested that OAL both expedite its review of the regulation and make it effective upon filing. In the normal course, a regulation adopted, approved, and filed between June 1 and August 31 would take effect on October 1, absent certain statutory conditions.

On July 24, 2024, [a press release from the Department of Industrial Relations](#) indicated that OAL had not only approved the regulation, but granted the request to expedite the effective date, rendering the regulation effective immediately. The press release specifically identified "restaurants, warehouses[,] and manufacturing" facilities as potential workplaces covered by the rule.

California employers are now left scrambling to determine if they are covered by the new rule and what they need to do to comply.

## Who is covered?

With limited exceptions, the new regulation is triggered whenever employees are working indoors, and the temperature equals or exceeds 82 degrees Fahrenheit.

The rule provides limited exceptions for incidental heat exposures, teleworking employees, or emergency operations directly involved in the protection of life or property.

## What is required?

The regulation's requirements are tiered depending on workplace conditions.

When the indoor temperature hits 82 degrees, all employers under the regulation must establish a written heat illness prevention plan that includes:

- / Procedures for the provision of water
- / Procedures for access to cool-down areas

- / Procedures to encourage employees to take preventative cool-down breaks and ascertain whether employees are exhibiting symptoms of heat illness
- / Procedures to respond to heat illness, including monitoring, first aid, and emergency response
- / Procedures to acclimatize new employees, or employees returning from an extended absence, to heat conditions
- / Procedures to provide all employees, including supervisors, effective training on heat illness prevention requirements

Additional requirements are triggered in the following circumstances:

- / If the temperature equals or exceeds 87 degrees Fahrenheit when employees are present
- / If the heat index equals or exceeds 87 degrees Fahrenheit when employees are present
- / If employees wear clothing that restricts heat removal, and the temperature equals or exceeds 82 degrees Fahrenheit
- / If employees work in a high radiant heat area and the temperature equals or exceeds 82 degrees Fahrenheit

Once any of the above thresholds are reached employer obligations include the following:

- / Measure and maintain records of temperature and/or heat index measurements for 12 months
- / Identify and evaluate all other non-temperature related environmental risk factors for heat illness
- / Obtain active employee or union involvement in measuring the temperature and identifying and evaluating environmental risk factors
- / Implement engineering controls when feasible to reduce the temperature and heat index below 87 degrees or reduce the temperature below 82 degrees where employees wear clothing that restricts heat removal or work in high radiant heat areas
- / Where engineering controls cannot lower the temperature below the regulatory thresholds, implement administrative controls such as rotating employees, rescheduling work, and reducing work intensity to minimize the risk of heat illness
- / Where engineering controls cannot lower the temperature below the regulatory thresholds, utilize personal heat-protective equipment (e.g., cooling vests, heat-reflective clothing) as feasible

## Next steps

First, employers will need to determine whether they are covered by the regulation and, if so, to what extent it applies. This may be challenging for employers without historical data or the appropriate equipment. Employers subject to the law will have to move quickly to develop and implement a plan. These efforts must include administrative and environmental controls, as well as employee training. Complying with the regulation will be challenging because it requires that employers first invest in engineering controls, such as air conditioning or cooling fans, absent a showing of infeasibility. Even then, it will require employers to alter operations to incorporate administrative controls such as temperature monitoring, active observation of employees taking preventative rest breaks, and potentially altering work schedules and workloads.

Heat illness progresses quickly when untreated and impacts every person differently depending on an individual's varying personal risk factors. This law requires employers, the vast majority of whom are not trained medical professionals, to not only effectively identify signs and symptoms of heat illness but to implement appropriate response procedures.

For more information on the content of this alert, please contact your Nixon Peabody attorney, [Nixon Peabody's OSHA team](#), or:

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