

# 2025 OSHA Webinar series



## Employers Heat Illness Prevention Rulemaking Coalition

April 24, 2025

**Eric J. Conn**  
*Chair, OSHA Practice*

**Beeta B. Lashkari**  
*Partner*

**Megan S. Shaked**  
*Cal/OSHA Practice Lead*

Conn Maciel Carey LLP's National OSHA • Workplace Safety Practice



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# Eric J. Conn

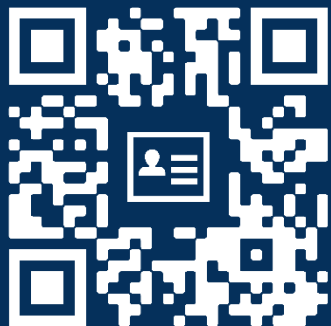
[econn@connmaciel.com](mailto:econn@connmaciel.com) • 202.909.2737

**Eric J. Conn** is Chair of Conn Maciel Carey LLP's national OSHA Practice, where he focuses on all aspects of occupational safety and health law:

- Practiced for 11 years alongside the 1<sup>st</sup> General Counsel of the OSH Review Commission.
- Represents employers in inspections, investigations, and enforcement actions involving OSHA, CSB, MSHA, and EPA.
- Manages investigations of serious workplace accidents.
- Handles all aspects of OSHA litigation, from citation contests and appeals to criminal investigations and prosecutions.
- Curator of the award-winning OSHA Defense Report blog.
- 1 of 9 OSHA-specialist attorneys rated “Band 1” nationwide by *Chambers*



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# Beeta B. Lashkari

[blashkari@connmaciel.com](mailto:blashkari@connmaciel.com) • 202.895.2784

Beeta Lashkari is a Partner in the OSHA • Workplace Safety Practice Group at **Conn Maciel Carey LLP**, where she focuses her practice on OSH law.

- Former Attorney-Investigator at the US Chemical Safety and Hazard Investigation Board (CSB).
- Represent employers in the full range of matters regarding the OSH Act.
- Handle the full range of litigation related to contesting citations issued by OSHA.
- Manage inspections and investigations by OSHA, the CSB, EPA, MSHA, DOJ, and state and local regulators.



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# Megan Stevens Shaked

[mshaked@connmaciel.com](mailto:mshaked@connmaciel.com) • 415.268.8882

**Megan Stevens Shaked** is a Partner and Lead in the California Workplace Safety and Employment Practices at **Conn Maciel Carey LLP's** San Francisco office, where she focuses her practice on a wide range of workplace safety and employment challenges employers face:

- Represents employers in inspections, investigations and enforcement actions involving Cal/OSHA
- Defends employers in employment litigation and administrative actions in California
- Counsels employers on compliance with employment laws and OSHA regulations

# Agenda

1

Overview of Fed. OSHA Rulemaking

2

Employers Heat Illness Prevention Rulemaking Coalition

3

Patchwork of State Plan Requirements

4

Next Steps: A Proactive Approach

A yellow paper flag on a wooden stick is positioned diagonally across the frame, pointing towards the top right. The flag is set against a background of a calendar grid with numbers like 14, 15, 21, 22, 23, 24, and 29 visible. A semi-transparent white banner is overlaid horizontally across the middle of the image, containing the title text.

# **Fed OSHA's Heat Illness Rulemaking Timeline**



# Ongoing Heat Illness Rulemaking



# Employers Heat Illness Prevention Coalition



- CMC has led a diverse coalition of employers and trade associations to work on OSHA's Heat Illness Rulemaking from its initial stage back in 2021.
- **Advanced Notice of Proposed Rulemaking** and info request (“**Phase 1**”):
  - Submitted comments to the ANPRM
  - Testified at numerous meetings of the NACOSH Heat Working Group
  - Made numerous submissions to NACOSH and OSHA throughout the NACOSH process
- **Small Business Review** Process (SBREFA) (“**Phase 2**”):
  - Placed 2 Small Entity Representatives to make recommendations for OSHA
  - Submitted comments about the SBAR Panel Report (mostly adopted)
- **Notice of Proposed Rulemaking** (proposed rule) (“**Phase 2**”):
  - Submitted comprehensive written comments





# Fed OSHA's Proposed Rule

# OSHA's Proposed Rule

= Heat Index 80°F; or  
= WBGT NIOSH RAL

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Provision	All Covered Employers	At Initial Heat Trigger	At High Heat Trigger
ID heat hazards	●	●	●
Heat illness and emergency response procedures	●	●	●
Training for employees and supervisors	●	●	●
Heat injury and illness prevention plan (HIIPP)	●	●	●
Recordkeeping	●	●	●
Drinking water		■	■
Break area		■	■
Indoor work area controls		■	■
Acclimatization plan for new or returning workers		■	■
Rest breaks (if needed)		■	■
Effective communication means with employees		■	■
Rest breaks (min. 15 min. every 2 hours)			◆
Supervisor/buddy system to observe for symptoms			◆
Hazard alert			◆

= Heat Index 90°F; or  
= WBGT NIOSH REL

# Scope

- Proposed rule would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agriculture sectors where OSHA has jurisdiction.

## **OSHA proposes to exclude from the rule:**

- Work activities w/ no reasonable expectation of exposure at/over Initial Heat Trigger
- Short duration exposures at/over Initial Heat Trigger (i.e., 15 min. or less in any 60-min. period)
- Emergency response activities
- Work activities at indoor work areas or vehicles where A/C consistently keeps the ambient temp. below 80°F
- Telework
- Indoor sedentary work activities that only involve sitting, occasional standing and walking for brief periods of time, and occasional lifting of objects weighing less than 10 lbs

# Heat Injury and Illness Prevention Program

- OSHA will require employers to develop and implement a comprehensive, site-specific written Heat Injury and Illness Prevention Plan (“HIIPP”), which must include:
  - list of work activities covered by the HIIPP
  - all policies and procedures necessary to comply w/ OSHA’s heat illness rule
  - the employer’s chosen heat metric (heat index or WBGT)
  - ID 1+ specific Heat Safety Coordinator(s)
- HIIPP must be reviewed annually + whenever a heat-related illness occurs that requires at least medical treatment beyond 1<sup>st</sup> aid
- Must involve non-supervisors (and their representatives) in developing, implementing, reviewing, and updating the HIIPP
- HIIPP must be made available in a language each employee, supervisor, and Heat Safety Coordinator can understand

# Monitoring Heat Conditions – Outdoors



- For outdoor work areas, employers will be required to monitor heat conditions:
  - Track local heat index forecasts provided by the Nat'l Weather Service or other reputable source
  - Measure the heat index
  - Measure the ambient temperature and humidity separately to calculate heat index
- OR
- Obtain a wet bulb globe temperature



# Monitoring Heat Conditions – Indoors

- Conduct heat-related hazard assessments to ID work areas w/ **reasonable expectation employees may be exposed to heat** at the heat triggers
- Implement **monitoring plans for each potential affected work area**, requiring the same monitoring/measuring methods as outdoor work areas (except for reliance on weather service forecasts):
  - Measuring the heat index;
  - Measuring ambient temp. and humidity separately to calculate heat index; or
  - Obtaining a wet bulb globe temperature
- Whenever there is a change in processes, controls, or outdoor temp. that could increase indoor heat exposure, **re-evaluate affected work areas to ID areas w/ a reasonable expectation of exposure** at the heat triggers, and **update monitoring plan accordingly**





# Initial Heat Trigger Requirements

- Provide **access to potable drinking water:** (i) placed in locations readily accessible to the employee; (ii) suitably cool; and (iii) of sufficient quantity to provide access to ***1 quart of drinking water per employee per hour***
- For **Outdoor** workplaces, provide **readily accessible break areas** to accommodate the # of employees w/ at least **1 break area w/ AC or natural/artificial shade**
- For **Indoor** workplaces, provide **readily accessible break areas** for the # of employees w/ at least 1 break area w/ AC or increased air movement and de-humidification
- For **Indoor** workplaces, **Engineering Controls** are required, including:
  - Increased air movement (e.g., fans or comparable natural ventilation), and de-humidification;
  - Air-conditioned work areas; or
  - For radiant heat sources, measures to reduce exposure (e.g., barriers, isolating sources)

# Initial Heat Trigger Requirements Cont'd

## Acclimitization Protocols:

### New Employees

During the 1<sup>st</sup> week on the job, employers must implement either:

1. A plan that incorporates all High Heat Trigger requirements; or
2. Gradual acclimatization to heat so employee is only exposed to heat no more than:
  - Day 1 = 20%
  - Day 2 = 40%
  - Day 3 = 60%
  - Day 4 = 80%

### Returning Employees

When employee returns from being away for 14+ days, employer must implement:

1. A plan that incorporates all High Heat Trigger requirements; or
2. Gradual acclimatization to heat so employee is only exposed to heat no more than:
  - Day 1 = 50%
  - Day 2 = 60%
  - Day 3 = 80%

# Initial Heat Trigger Requirements Cont'd



- Allow for and encourage employees to take **Paid Rest Breaks**.
- Maintain a means of **effective, two-way communication with employees** and regularly communicate with employees.
- If employers provide employees with cooling PPE, employers must ensure the **cooling properties of the PPE are maintained at all times** during use.

# High Heat Trigger Requirements

- **In addition to** Initial Heat Trigger requirements, also require:
  - Mandatory **15-min.+ paid rest breaks** at least every 2 hours (not counting time walking to/from break area or donning/doffing PPE)
  - Observation for signs/symptoms via a **mandatory buddy system or regular observation** by Supervisor/Heat Safety Coordinator (no more than 20 employees per supervisor)
  - **Hazard alerts**
  - Signage for **excessively high heat indoor work areas** (i.e., work areas w/ ambient temp. that regularly exceed 120°F)



# Other Requirements

- Requirements for **heat illness-related emergency response and planning**
- Comprehensive and recurring heat illness related training, including **initial, annual, and supplemental training**, in a language and literacy level each employee understands, and w/ an opportunity for questions and answers
- Heat illness-related **recordkeeping requirements** (e.g., if employers conduct indoor measurements, they must have written or electronic records of those measurements and retain them for 6 months)



A collage of construction safety gear. In the foreground, a yellow hard hat is partially visible on the right. To its left are a pair of brown leather work boots with laces. In front of the boots are a pair of clear safety glasses with yellow frames. The background is a soft-focus mix of these items and a window with horizontal blinds.

# Coalition Comments and Status



# Key Highlights of Coalition NPRM Comments



On behalf of the Employers Heat Illness Prevention Coalition, we submitted public comments to the docket, emphasizing our commitment to advocating for a protective/reasonable standard:

- Any Final Rule Should Provide Maximum Flexibility for Employers and be Performance-Based.
- Certain Provisions in the Proposed Rule are Technically or Economically Infeasible.
- This Rule Should Not Cover Indoor Work Settings.
- The Heat Triggers Should be Higher, Include an Option Based on Ambient Temperature, and Account for Local Conditions.

# Key Highlights of Coalition NPRM Comments



- OSHA Should Add Flexibility to the Proposed Requirements for Outdoor Heat Monitoring, and if the Final Standard Covers Indoor Work Settings, OSHA Should Add Flexibility to the Proposed Requirements for Indoor Heat Monitoring.
- Hydration Requirements Should Focus on Making Cool Potable Water Readily Accessible and Training on Dehydration.
- Mandatory Rest Break Requirements are Duplicative (Employees Can Already Take Rest Breaks on an As-Needed Basis).
- Any Final Standard Should Provide Flexible Acclimatization Requirements.
- OSHA Should Not Include New Recordkeeping Requirements in the Final Rule.



# Trump Administration and Fed OSHA Heat Rulemaking

# Trump's Early Exec. Orders re: Agency Rulemaking

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- Freeze implementation of new federal regulations and prevent bureaucrats from issuing regulations until Trump Admin. installs political appointees
- Agencies may not propose/issue new rule until Trump-appointed agency head reviews and approves the rule
- Requirement to rescind 10 rules for every new rule (net negative cost)



# Other Coalitions and Legislators

- House Committee on Education & Workforce recommended multiple proposed and final rules developed during the Biden Admin. that DOL should rescind or withdraw, which list included fed OSHA's **Indoor/Outdoor Heat Injury and Illness Prevention**
- Another industry coalition is lobbying Congress to advance legislation (“the Heat Workforce Standards Act”) that would:
  - Bar federal OSHA from promulgating the current proposed Heat Illness Standard
  - Prevent any future administration from issuing any OSHA Heat Standard
  - *“OSHA is bound by statute to regulate based on occupational safety and health hazards, not public health hazards. Heat injury and illness is a broader public health hazard. OSHA does not have the authority to regulate based on heat.”*
  - Legislation expected to be proposed in the House imminently

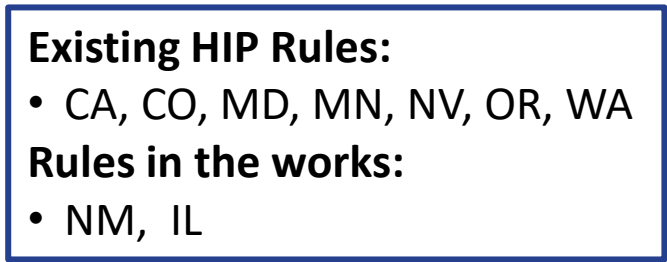




# Patchwork of State-level Heat Illness Requirements



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# Patchwork of Coverage and Requirements



For example, Scope:

- **CA:**
  - Outdoor: Threshold of 80°F w/ additional high heat procedures at 95°F in some industries
  - Indoor: When temp. reaches 82°F; heightened requirements when certain thresholds met
- **CO:** Agriculture only
- **MD:**
  - Outdoor: General Threshold of 80°F heat index
  - Indoor: Range in threshold temp. based on nature of work
- **NV:** Applies to exposures to hazardous work conditions that may cause occupational heat illness
- **OR:** When heat index  $\geq$  initial temperature threshold (80°F; high heat requirements 90°F)
- **WA:** Outdoor 52°F or 80°F depending on clothing/PPE required; high heat procedures 90°F

# Some Notable Differences

- **Exceptions** in scope, etc. vary state to state
- Unique **definitions** across various jurisdictions (e.g., OR has precise definition for Cool and Cold water w/ specific temp.)
- **Lots of detail** in each regulation
  - Precise requirements for training, monitoring, cool-down areas/shade; acclimatization; accessibility and temp. of drinking water; high-heat procedures; recordkeeping, etc.
- NV has a specific **threshold hazard assessment** requirement
- CA, OR, MD, WA: **specific rest schedules** under certain circumstances (schedules differ b/w the states)



A collage of construction safety gear. In the foreground, a yellow hard hat is partially visible on the right. To its left are a pair of brown leather work boots with laces. In front of the boots are a pair of clear safety glasses with yellow frames. The background is a soft-focus mix of these items and a window with horizontal blinds.

# Next Steps



# Coalition Status and Next Steps

1. Keep the coalition informed re: developments w/ the rulemaking
2. Actively participate in the 6/16/25 public rulemaking hearing
3. Possible proactive advocacy to Trump Admin. OSHA to make significant changes to the current proposed Heat Standard and **issue a final rule during this term**
4. Participate in multiple **EO 12866 stakeholder meetings** w/ the White House's OMB
5. Provide **education and resources for coalition members** regarding any final standard



# Pros/Cons of a Proactive Approach

## Pros:

- Fed OSHA heat standard would reduce confusing and conflicting patchwork of inconsistent state laws and regulations (by model and/or preemption)
- Deferring will leave a flawed rule waiting on the 1-yard line for the next Democratic Administration

## Cons:

- Specific standard would be easier for OSHA to enforce than the current General Duty Clause approach
- Timing of compliance costs (incur these costs now or later?)



# Anonymous Poll Questions

1. Should we participate in the public rulemaking hearing?
2. Should we proactively advocate for OSHA to finalize a simpler, more flexible version of a heat standard (vs. moving the heat rulemaking to “long term actions”)?

# 2025 Cal/OSHA Webinar series



## Workplace Safety after COVID-19 Regulations Sunset and the Potential General Industry Infectious Disease Standard

Tuesday, March 27<sup>th</sup>

## Cal/OSHA Mid-Year Update

Wednesday May 21<sup>st</sup>

## Top Strategies for Reviewing Your Safety Program

Thursday, July 24<sup>th</sup>

## Protect Your Interest: Workplace Crisis Management

Wednesday, September 10<sup>th</sup>

## CMC's 3<sup>rd</sup> Annual Cal/OSHA and Employment Law Summit

Tuesday, October 21<sup>st</sup> and Thursday, October 23<sup>rd</sup>

## Federal and State OSHA Heat Illness Prevention (OSHA & Cal/OSHA Crossover)

Thursday, April 24<sup>th</sup>

## Top Cal/OSHA Violations

Wednesday, June 18<sup>th</sup>

## How Safety Impacts the Workplace Beyond OSHA

Wednesday, August 27<sup>th</sup>

## Process Safety Update

Thursday, October 16<sup>th</sup>

## Workplace Violence Prevention Strategies

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## Annual Cal/OSHA Enforcement and Regulatory Update: Are You Ready for 2026?

Thursday, December 4<sup>th</sup>

# 2025 OSHA Webinar series



## OSHA 2024 in Review and 2025 Forecast

Tuesday, January 28<sup>th</sup>

## 5 Most Cited General Industry OSHA Standards

Thursday, March 20<sup>th</sup>

## Massage Therapy/ART and Other Cutting-Edge Issues in Recordkeeping (Mental Health)

Wednesday, May 14<sup>th</sup>

## Updates in the Retaliation and Whistleblower Landscape

Wednesday, July 9<sup>th</sup>

## Protect Your Interest: Workplace Crisis Management

Wednesday, September 10<sup>th</sup>

## Workplace Violence Prevention Strategies

Thursday, November 13<sup>th</sup>

## Key Considerations in IH (Chemicals & Dust)

Monday, February 10<sup>th</sup>

## Federal and State OSHA Heat Illness Prevention

Thursday, April 24<sup>th</sup>

## What Employers Need to Know About OSHA Formal Letters of Interpretation

Tuesday, June 17<sup>th</sup>

## Top 5 Construction Industry OSHA Citations

Wednesday, August 13<sup>th</sup>

## Process Safety Update: OSHA's PSM Standard, EPA's RMP Rule, the Chemical Safety Board, and Cal/OSHA's PSM Unit

Thursday, October 16<sup>th</sup>

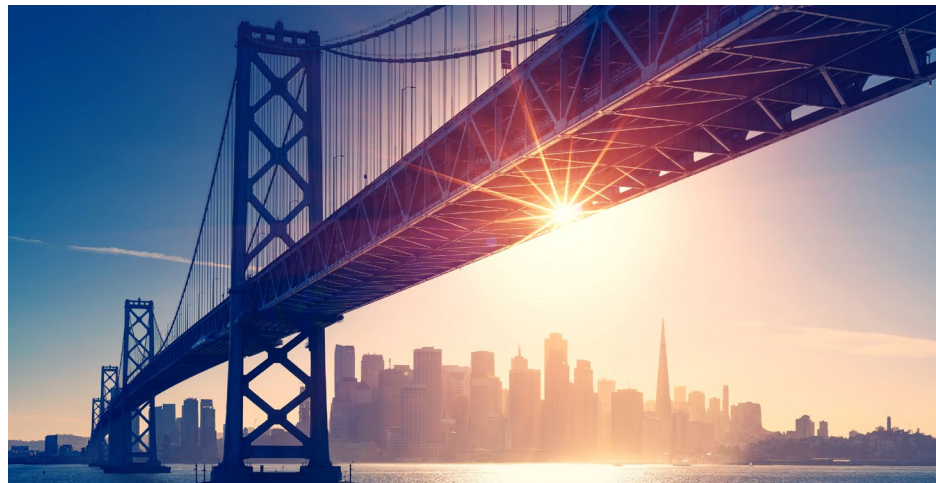
## Safety 2.0: New Approaches to Performance Management (HOP), Auditing and Enforcement

Tuesday, December 16<sup>th</sup>

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## In-Person Programs and Events

Both programs will  
be submitted for  
SHRM, HRCI and  
state CLE credits.



### **Cal/OSHA & California L&E Law Summit in Northern & Southern California**

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# Questions



# Contact Us



**Eric J. Conn**

*Chair, OSHA Practice*  
**Conn Maciel Carey LLP**  
Washington, DC  
202.909.2737  
[econn@connmaciel.com](mailto:econn@connmaciel.com)



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**Megan S. Shaked**

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**Conn Maciel Carey LLP**  
San Francisco, CA  
415.268.8882  
[mshaked@connmaciel.com](mailto:mshaked@connmaciel.com)