Oregon Releases Final Rules on Heat Illness Prevention and Wildfire Smoke Exposure

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On May 9 and 10, 2022, the Oregon Occupational Safety and Health Administration (Oregon OSHA) adopted final rules on heat illness and wildfire smoke.

The Oregon OSHA Final Heat Illness Prevention Standard
Oregon OSHA’s final rule on the prevention of heat illness will be effective on June 15, 2022. The new rule will likely be important outside Oregon because the federal Occupational Safety and Health Administration (OSHA) may look to it to draft a federal rule.

The major provisions of the rule are summarized below.

Scope

The rule requires employers to take certain safety measures whenever an employee performs work activities, whether in indoor or outdoor environments, where the heat index (apparent temperature) equals or exceeds 80 degrees Fahrenheit.

The final rule exempts:

- “Emergency operations ... directly involved in the protection of life or property, or the restoration of essential services”;
- Short-term heat exposures, where an employee is not required to work for more than fifteen minutes per sixty-minute period; and
- Heat exposures from work processes, such as those in bakeries.

Measures Required for Temperatures That Are Hot (>80°F) but not “High Heat” (>90°F)

During nonemergency work when the heat index is 80°F or higher, or the workload is “light” or “rest” and the heat index is less than 90°F, employers must:

- Provide shade. If doing so interferes with completion of a task, then alternate measures must be taken, such as cooling vests.
- Provide drinking water. Provide enough cool or cold drinking water (or noncaffeinated sports drinks) for each employee to drink thirty-two ounces per hour.
- Implement a written acclimatization plan. An employer may either write its own plan (taking certain required factors into account) or follow the plan developed by the National Institute for Occupational Safety and Health (NIOSH) in section 4 of Appendix A, which requires that employee exposure to heat be “gradually” increased over seven to fourteen days.
- Implement a written heat illness prevention plan. The plan must cover training, hazard recognition, provision of drinking water, shade, rest breaks, acclimatization, etc.
- Train employees. Provide heat illness prevention training.

Measures Required for “High Heat” Temperatures (>90°F)

When the heat index is 90°F or above, an employer must follow a rest break schedule that:

- Is designed by the employer but that permits ten-minute shaded breaks at least
every two hours, and fifteen-minute breaks every hour if the heat index is 100°F or greater;

• Is the NIOSH schedule in section 3 of Appendix A (which sets out different rest periods depending on work stress, sun exposure, temperature, and humidity; for example, at an adjusted temperature of 95°F, it requires a fifteen-minute break hourly); or

• Requires ten-minute breaks at least every two hours if the heat index is 90°F or greater, increasing ten minutes for every increase of five degrees in the heat index.

Implied duty to compensate. The rule declares that a rule-required break “is a work assignment,” implying (but unlike the proposed rule) not expressly stating, that it must be compensated.

The Oregon OSHA Final Wildfire Smoke Illness Prevention Standard

Oregon OSHA’s new final rule on employee exposure to wildfire smoke takes effect on July 1, 2022. This summary covers its major provisions.

Scope

The rule requires employers to take certain safety measures if their employees are or will be exposed to wildfire smoke where the ambient air concentration for fine particulate matter is at or above an Air Quality Index (AQI) value of 101.

The new rule has several exemptions, including the following:

• Emergency operations. The rule has a partial but still broad exemption from the wildfire smoke standard for “[e]mergency operations that are directly involved in the protection of life or property, public safety power shutoffs, or restoration of essential services, such as ... utilities, and communications....” The only provisions of the wildfire smoke standard that would still apply to such emergency operations are those that require training and provision of filtering facepiece respirators for voluntary use when the AQI exceeds 101 (that is, when particles larger than PM2.5 exceed 35.5 μg/m³).

• Intermittent exposures. The rule exempts “[w]ork activities involving only intermittent employee exposure[s]” of less than fifteen minutes in an hour to an AQI of 101, so long as total daily exposures are less than one hour.

Requirements

Unless exempt, if employees are or are likely to be exposed to AQI 101, employers must:

• Perform an exposure assessment. Perform pre-shift monitoring of employee exposure by checking various websites or government health advisories, or directly measuring the AQI.
• **Provide information and training.** Cover exposure symptoms, health effects, etc., and document the training.

• **Provide two-way communication.** Develop a two-way communication plan.

• **Provide exposure controls.** These would include engineering and administrative controls, and the provision of filtering facepiece respirators for voluntary use. (Compliance with OSHA’s respirator standard (29 C.F.R. § 1910.134) would not be required.)

• **Require use of filtering facepiece respirators if AQI exceeds 251 (PM2.5 $\geq 9 \mu g/m^3$).** Comply with the medical-evaluation and fit-testing requirements of OSHA’s respirator standard or with the special program in Appendix A of the final rule.

• **Require use of NIOSH-approved respirators (e.g., elastomeric) if AQI exceeds 501 (PM2.5 $\geq 4 \mu g/m^3$).** Comply with all provisions of OSHA’s respirator standard.


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