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Jay Withrow

Director, Legal Support, VPP, ORA, OPP, and OWP

Virginia Department of Labor and Industry

Main Street Centre

600 East Main Street, Suite 207

Richmond, VA 23219

Dear Mr. Withrow,

It is important for the Virginia Department of Labor and Industry and the Safety and Health Codes Board to move forward with a rule to protect workers from heat illness. The background information provided to the regulatory advisory panel, including data on the significant issue and impact of heat illness among workers in Virginia and the current limitations to protect workers under existing regulations, supports the need for a standard in Virginia to protect outdoor workers, indoor workers, and those who perform mobile work.

The AFL-CIO has long standing expertise in the development, promulgation and implementation of OSHA standards and regulatory and enforcement actions, including programmatic safety and health standards. Our affiliated unions have been addressing heat illness prevention hazards directly with employers and together, we have been actively involved in developing occupational heat illness prevention rules in other states and nationally. We are pleased to serve on the regulatory advisory panel and provide our expertise on behalf of the more than 300,000 union members and their families in the Commonwealth of Virginia.

According to the National Oceanic and Atmospheric Administration, Virginia's temperatures throughout January–June 2021 were hotter than 75% of years in the 20th century with an average temperature of 96°F.¹ Dangerously hot working conditions cause heat illness and death for workers in many industries, and

¹ NOAA National Centers for Environmental Information, State of the Climate: National Climate Report for July 2021, published online August 2021, retrieved on October 13, 2021 from <https://www.ncdc.noaa.gov/sotc/national/202107>.

contribute to other injuries due to slippery sweat, fogging personal protective equipment, dizziness and hot tools.

Preventing occupational overexposure to heat is straightforward when employers have a plan to assess the temperature and compounding occupational factors that contribute to heat illness, and to implement workplace control measures to mitigate heat exposure and train workers and supervisors. We support Virginia's approach of incorporating existing state heat illness prevention standard provisions, as employers have been able to implement these protections to keep workers safe from extreme heat. This initial draft is a good start, but there are multiple areas that must be maintained and strengthened in order to address and reduce the significant risk that workers face to heat exposures on the job.

Heat Index and Other Risk Factor Triggers

The draft provision utilizing an 80-degree heat index trigger to a written plan, water, cool down areas, acclimatization and training should be maintained, key components to a comprehensive heat illness prevention model.

The draft provision creating high heat procedures at a 90-degree heat index is also appropriate. However, DOLI should also require employers to take into account other risk factors that contribute to overexposure to heat such as radiant heat, workload and clothing, and use them to trigger high heat procedures. While there are complex formulas for incorporating these risk factors into an estimated heat index, it would be straightforward for employers and workers alike for Virginia to have a provision that requires the implementation of high heat procedures when these defined risk factors are present. We strongly encourage DOLI to incorporate the definition of these risk factors and use them as a basis to trigger high heat provisions.

DOLI should require additional procedures for extreme heat conditions. This is typically defined as heat above 100 degrees heat index or triggered by a lower heat index with radiant heat exposures, workloads or clothing that increase the risk of heat illness similar to extreme heat temperatures. DOLI should consider the necessity of additional rest breaks, monitoring for heat illness symptoms and other precautions during extreme heat conditions. Additionally, there will be extreme heat conditions where work cannot be performed safely and work must be stopped and rescheduled for a cooler time.

Written Plan

Provisions requiring a written plan must be maintained. Employers must create and implement a written plan to control the risks for overexposure to heat. The plan must be written to ensure that both employers and workers know the risk factors that are being considered and the actions to take to control heat exposures. The control measures must be based on the foundational concept of the hierarchy of controls—implementing the most effective controls first to reduce heat overexposures as much as possible. This includes access to air conditioning, shielding or

blocking of radiant heat, and scheduling work at cool times of day. Additionally, workers and their representatives must be involved in every step of the process to ensure that all the risks are identified, proper control measures are implemented in their workplace and access to adequate rest breaks are provided and encouraged.

Acclimatization

Acclimatization is an essential control measure to reduce heat exposure for the first assignment periods of hot work. The written plan must include the acclimatization procedures, but also, DOLI must strengthen the draft acclimatization provisions. The current sole provisions to closely observe newly assigned employees is not sufficient to reduce the magnitude of the risk faced by newly assigned workers. The provisions must be strengthened to require employers to implement a scheduled acclimatization plan to reduce heat exposure within the first days of assigning work in hot conditions. Employers should be able to tailor their acclimatization plan to their specific workplace, but the plan must include reduced workloads and reduced work hours in hot conditions for at least the first five days. Additionally, commonly used and recommended schedules can be provided to employers in an appendix to help them develop their plan.

Rest Breaks

Access to cool down areas must not only be provided, but employers must require periodic rest breaks, and encourage rest breaks and drinking of water as necessary for all workers in hot conditions. Currently the draft language only requires employers to schedule at minimum a ten-minute break once every two hours in high heat conditions. However, the duration and frequency of breaks should be based on both the temperature and other risk factors (e.g., radiant heat, workload, PPE). DOLI should require employers to schedule breaks specific for heat illness prevention during all hot working conditions covered by the standard. Additional breaks in high heat conditions, and if work is permitted in extreme heat conditions, additional and extended breaks should be required.

In addition to scheduled breaks, DOLI should strengthen language concerning access to cool down areas when employees need a preventative rest break to cool down and drink water. Employees should be encouraged to take a preventative break when they feel the need to do so to prevent overheating and should remain in the shade for as long as necessary until they are no longer experiencing signs or symptoms of heat illness. The California standard has provisions (8 CCR 3395(d)(3) and (4)) to address preventative breaks that should be incorporated into the proposed standard.

When the worker, due to either a scheduled break or preventative break, takes rest breaks, the employee must not be penalized through loss of pay or benefits. Any time spent in a rest break, or time spent acclimatizing to hot work, must be paid to ensure that workers are not discouraged from taking breaks when needed to prevent heat illness. California has clarified that all required breaks to prevent heat illness must be paid for all workers under their labor codes, including

workers who are compensated on a piece-rate basis.^{2,3} DOLI should incorporate similar paid break protections into the proposed standard.

Drinking Water and Electrolytes

Cool drinking water and replenishing electrolytes is essential to preventing heat illness and an adequate supply must be available for workers as necessary. DOLI should strengthen the drinking water provisions to include employer-provided access to cool water and electrolytes.

Training

The training provisions drafted by DOLI must be included in the proposed standard. Training for workers ensures that they have information about the signs, symptoms and risk of heat illness, the risk factors in their workplace, the actions their employer is taking to protect them, and how to safely perform their job tasks, including when and where to safely take a scheduled or preventative break. To ensure training is effective, employers must document who has received training and ensure that participatory training is done by a knowledgeable person using methods and language that all workers understand and ensure workers are able to ask questions.

Additionally, supervisors must be provided specific heat illness prevention training on awareness and implementation. The provisions in the draft document should be strengthened to add training that ensures supervisors encourage workers to take a preventive break if they are experiencing signs or symptoms of heat illness. Supervisors and workers should be rewarded for identifying signs and symptoms of heat illness and taking preventative action before a worker falls ill.

Thank you for the opportunity to comment on the draft proposed heat illness prevention standard and serve on the regulatory advisory panel. Please contact me with any questions or additional information.



MK Fletcher, MSPH

Safety and Health Specialist

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² https://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm

³ <https://law.justia.com/codes/california/2011/lab/division-2/200-243/226.7/>