

How HOT Is Too HOT? Oregon OSHA’s New High and Extreme Heat Rule

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During Oregon’s extreme heat wave in June, an agricultural worker in Marion County tragically passed away as a result of heat illness. In response, Oregon OSHA adopted a temporary emergency rule that **expands access to shade and water**. The rule is effective **immediately** and will stay in place for 180 days. It applies to **every Oregon workplace**—outdoors and indoors—where heat dangers are caused by weather and requires employers to do the following:

- Provide shade and readily accessible drinking water
- Implement a system for monitoring for signs of heat illness among employees
- Provide additional cool-down rest breaks
- Develop and maintain emergency medical plans and procedures
- Train all employees in the prevention of heat illness

The rule uses a “heat index,” which refers to how hot it feels to the body when relative humidity is combined with the air temperature. Employers may consider using the [OSHA–NIOSH Heat Safety Tool app](#) to determine heat index. The new rule does not apply to heat that is generated only from work processes, as occurs in foundries for example. In those cases, however, employers must nevertheless control harmful or dangerous temperature and humidity conditions or the effects of such conditions on employees.

Access to Shade and Water

When the heat index is **equal to or above 80 degrees**, employers must provide:

- **Access to adequate shade**, and
 - Shade provided must allow the body to cool and can be either natural or artificial. Access to the shade area, means that the shade area:
 - Does not expose employees to unsafe or unhealthy conditions and does not deter or discourage access or use.
 - Is open or mechanically ventilated for cooling.
 - Can accommodate the number of employees on break, so they can all sit in the shade.

- Is located as close as practical to areas employees are working.
- Is large enough to accommodate employees who remain onsite during meal periods.
- If access to shade is not safe or feasible, employers must implement alternative cooling measures that provide equivalent protection.
- An **adequate supply of drinking water**, which:
 - Is readily accessible to employees at all times and at no cost.
 - Enables each employee to consume 32 ounces per hour.
 - Is cool (66-77 degrees) or cold (35-65 degrees).
 - Can be substituted for sports drinks (or similar electrolyte-replenishing drinks), but these substitutes should not completely replace water.
 - Gives employees ample opportunity to drink water.

Heat Illness Monitoring System, Cool-Down Breaks, and Emergency Medical Plans and Procedures

When the heat index rises **above 90 degrees**, in addition to the rules described above, employers must:

- Ensure effective communication between employees and a supervisor to report concerns.
- Observe employees for alertness and signs and symptoms of heat illness and monitor to determine whether medical attention is necessary. Employers can implement one or more of the following:
 - Regular communication with employees working alone (such as by radio, cellphone, or other means).
 - A mandatory buddy system, or
 - Other equally effective means of observation or communication.
- Provide ten-minute cool-down rest periods in shade for every two hours of work. Employers can provide cool-down periods at the same time as meal and rest breaks. Except when such a rest period coincides with the existing unpaid meal break, the preventative cool-down rest period must be compensated as worktime.
- Develop and implement an emergency medical plan and practices, including designating employee(s) to call for emergency medical services.

Heat Illness Prevention Training

By August 1, 2021, employers must train all employees, in a language the employee readily understands, on the following topics:

- Environmental and personal risk factors for heat illness.
- Procedures for complying with the new rule, as well as the employee's right to the rule's protections without fear of retaliation.
- The concept, importance, and methods of adapting to working in a hot environment.
- The importance of immediately reporting the signs and symptoms of heat illness.
- The effects of non-job factors (medication, alcohol, obesity, etc.) on tolerance to heat stress.
- The different types of heat-related illnesses and their common signs and symptoms.

The full text of the emergency rule can be found on Oregon OSHA's website: <https://osha.oregon.gov/OSHArules/adopted/2021/ao6-2021-text-heatillnessprevention.pdf>. Employers should work with employment counsel to implement the new systems, procedures, and training required by the rule.

About the Authors

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Matt represents local and national clients in employment and general litigation matters before state and federal courts and administrative agencies. He has defended against claims of breach of contract, retaliation, constructive discharge, wrongful termination, disparate treatment, and wage and hour violations. In addition to representing clients in litigation, Matt also assists clients with a variety of business and employment issues, such as workplace safety, contract negotiations, disability accommodation, protected leave, wage and hour issues, and employee discipline and termination.

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