



Indoor Heat Reg, Explained

Six and a half years after legislation was signed into law requiring a Cal/OSHA indoor heat illness prevention standard, the Standards Board has published the official regulation. Based in large part on the existing outdoor heat reg, the proposal also has requirements particular to indoor heat exposure.



Fed-OSHA

Hot processes will require extra steps by employers to protect employees in the indoor heat illness proposal.

The regulation requires subject employers to have a written Heat Illness Prevention Plan. The key heat trigger is 82°F, requiring employers to provide water, cool-down rests, acclimation, emergency response procedures and specific training.

Additional requirements kick in at other triggers, such as 82°F when employees are wearing clothing that restricts heat removal, or work in a high radiant-heat area, or at 87°F in general. See the accompanying sidebar for a synopsis.

RAND Corp., which conducted the Standardized Regulatory Impact Assessment of the proposal, projects that the regulation will save 10 lives and prevent more than 2,000 cases of heat illness over its first 10 years. RAND asserts the standard could increase productivity, because “there is evidence that worker productivity declines in hot environments.”

As for the costs to employers, the SRIA estimates a total of \$213 million the first year and \$87 million per year thereafter. “The direct compliance costs include investments in mitigation efforts, including engineering and administrative controls, workforce training, development of a written HIPP and other compliance activities.”

The standard could be a boon to the air conditioning industry, the Board says. “The proposed regulation will likely increase the demand for HVAC systems,” it states. “There is likely to be a particular need to reduce temperatures in large warehouses,

manufacturing and production facilities, greenhouses, and wholesale and retail distribution centers.” Restaurant kitchens and dry cleaners might also need to improve their airflow and exhaust systems.

The Board also suggests that employers could “innovate” through changes to their processes and procedures. “For example, employers may incentivize supervisors to provide additional cool-down rest breaks in the summer months and during heat waves,” it says. “Certain industries already move work shifts to cooler times of the day or schedule additional breaks to reduce exposure to heat; the prevalence of these adaptations may increase to avoid working during periods of time when the more stringent (and costly) requires of the proposed rule would apply.”

The Board will hold a public hearing on the proposal on May 18th in San Diego. In the meantime, send comments to oshsb@dir.ca.gov or by snail mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

Indoor Heat Illness Proposal Synopsis

New General Industry Safety Orders §3396:

(a) Scope: Applies to all indoor workplaces where the temperature equals or exceeds 82°F when employees are present. All indoor work areas at least 82°F are subject to provisions requiring an indoor heat illness prevention plan, water, access to cool-down areas, acclimation, emergency response procedures, and specific training.

The standard does to apply to telework from a location of the employee’s choice not under the employer’s control.

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It is 8,041 days since our last lost-time accident.

Video Hearing Rules

The Cal/OSHA Appeals Board has submitted formal rules recognizing video hearings to the state Office of Administrative Law. Board Chair Ed Lowry says the rulemaking package likely will take effect on July 1st.

California courts so far have backed the Board in employer litigation intended to end mandatory video hearings, which were instituted during the pandemic when in-person hearings were shut down. "We have yet to lose in Superior Court," Lowry commented at the recent Cal/OSHA Advisory Committee meeting.

Some lawyers in the OSHA defense bar have objected to video-only hearings because they believe they "hamstring" an attorney's ability to properly evaluate witnesses and can otherwise hurt defense strategy. The law firm bringing all the cases, Donnell, Melgoza & Scates, has accused the Board of engaging in underground rulemaking. During the state of emergency, the board relied on a governor's executive order suspending all statutes and regulations permitting in-person hearings.

Another complaint was that attorneys saw a lack of consistency between administrative law judges on how video hearings were being run. The impending rules are designed to provide a consistent system. Here are what the new rules will do:

- Provide that a hearing may be conducted by videoconference (as provided in Government Code §11440.30, "if each participant in the hearing has an opportunity to participate in and hear the entire proceeding while it is taking place, to observe the exhibits, and to observe the hearing participants to the extent feasible");
- Require that notices of hearing include the date, time, length, format (in-person, video or combination), and the physical location of an in-person hearing. For video hearings, the notice shall include instructions on how to participate, the equipment needed and what to do in case of technical problems;



Appeals Board

A mock hearing demonstrating the Appeals Board videoconference system works.

- Relevant factors include evidentiary presentation and case management issues; multiple hearing factors; length needed for the hearing; the place where the violation is alleged to have occurred; location and suitability of Appeals Board hearing venues; availability of ALJs, witnesses and parties; transportation barriers for parties and witnesses; hardship caused by time away from work for parties or witnesses, or personal issues; the health and safety of any parties; and other factors deemed relevant by the ALJ or Presiding ALJ;
- Provide that the Board may issue orders requiring prehearing lodging of proposed exhibits in its OASIS system if the hearing is set for a video hearing. Parties could add additional exhibits if they show the Board good cause;
- Make facilities available with necessary equipment if a witness, subpoenaed person, party or representative (in reasonable time) contends they do not have such access. The Board could require evidence to back up such claims;
- Set expedited hearings for video conference, with the option to modify the format upon party request;
- Permit parties to object to the selection of a videoconference format in a written motion, accompanied by evidence. The Board also may reconsider the hearing format on its own motion.

[Click here](#) to see the videoconference regulation, §376, Time and Place of Hearing.



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Latest Cal/OSHA Inspection Stats

Onsite inspections by Cal/OSHA's Division of Occupational Safety and Health are rising. In 2022 the rose to near pre-pandemic levels, and the agency issued citations for more than 11,000 violations, according to the latest DOSH statistics.

More than 30% of all inspections last year were in construction, while 30% of the violations were issued to manufacturing employers. Those investigations included comprehensive, partial and records-only inspections.

Here is the latest data from the top 10 business sectors.

- Agriculture: 478 total inspections; 785 violations issued;
- Construction: 1,983 inspections, 3,396 violations;
- Manufacturing: 913 inspections, 2,356 violations;
- Wholesale trade: 262 inspections, 576 violations;
- Retail trade: 436 inspections, 751 violations;
- Transportation & warehousing: 331 inspections, 751 violations;
- Administrative and support and Waste management and remediation services: 530 inspections, 871 violations;
- Health care & Social assistance: 216 inspections, 354 violations;
- Accommodation & food services: 264 inspections, 590 violations; and
- Other services, except public administration: 240 inspections, 700 violations.



Cal/OSHA Inspection and Violations Detail

	2015	2016	2017	2018	2019	2020	2021	2022	2023 Q1
Total Investigations	14,137	15,149	16,148	15,347	14,822	18,803	14,800	14,004	2,662
Letter Investigations	6,447	7,287	8,238	7,531	7,264	12,782	9,305	7,585	1,683
Onsite Inspections	7,690	7,862	7,910	7,816	7,558	6,021	5,495	6,419	979
% Onsite Programmed	19%	20%	19%	20%	22%	13%	10%	18%	23%
% Onsite Not in Compliance	27%	26%	27%	24%	26%	32%	27%	21%	3%
% Not in Compliance Appealed	47%	47%	49%	49%	47%	53%	48%	33%	4%
% Still Under Appeal	0%	0%	0%	1%	2%	10%	19%	23%	4%
Violations per Not in Compliance Inspection	3.45%	3.77%	3.50%	3.39%	3.30%	2.98%	2.81%	2.91%	1.77%
% S-W-R Inspection	22%	24%	26%	26%	24%	29%	24%	22%	6%
% Abated Before Issuance	40%	45%	51%	55%	58%	56%	58%	62%	88%
% S-W-R Abated Before Issuance	66%	70%	69%	72%	75%	65%	71%	76%	100%
% Other Than Serious Abated Before Issuance	32%	37%	44%	50%	52%	52%	53%	59%	87%
Current Violations per Not in Compliance Inspection	3.20%	3.52%	3.26%	3.12%	3.02%	2.45%	2.09%	2.13%	1.71%
% S-W-R Current	18%	20%	21%	20%	20%	21%	17%	17%	6%
% S-W-R Retained	81%	82%	77%	77%	79%	76%	82%	93%	100%
% Violations Currently Under Appeal	2.79%	2.55%	2.15%	2.74%	3.31%	12.60%	22.13%	25.58%	3.57%
% Currently Abated	100%	100%	100%	99%	98%	93%	90%	81%	90%
% S-W-R Currently Abated	100%	100%	100%	99%	99%	94%	96%	84%	100%

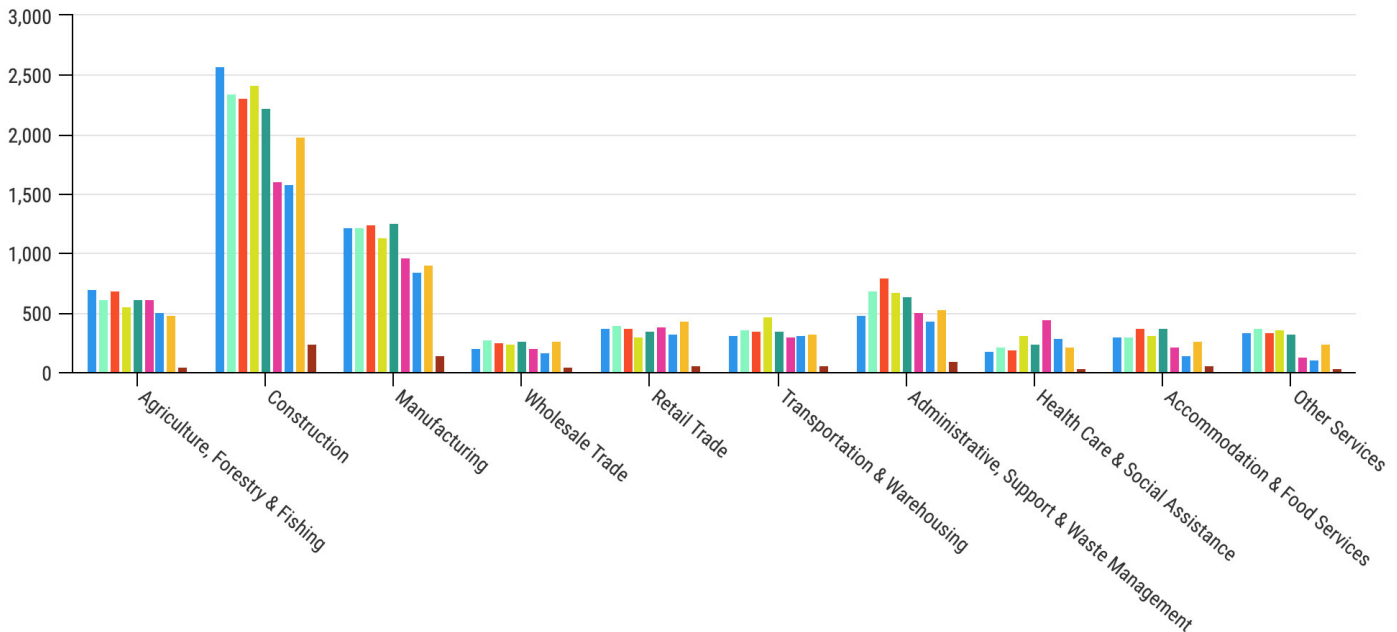
DOSH opened 14,004 total investigations last year, including 6,419 onsite inspections and 7,585 letter investigations. The latter were down 18% from 2021's 9,305, and 41% fewer than 2020's 12,782, as DOSH conducted many more letter investigations during the pandemic years. Onsite inspections in 2022 were the highest since 2019's 7,558.

During last year's onsite inspections, 21% of worksites inspected were found to not be in compliance with Title 8 safety orders, the lowest percentage in recent years. By comparison, 2020's percentage was 32% and 27% in 2021. One-third of cites

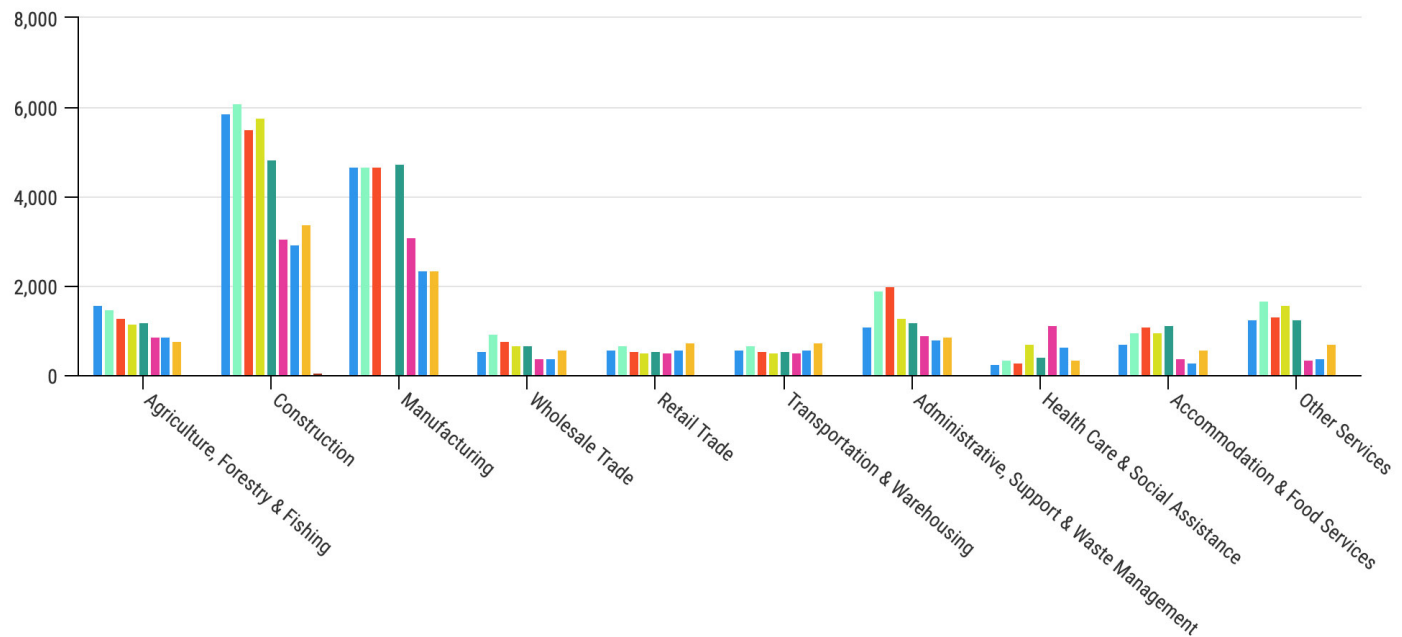
were appealed, and 23% of those appeals are ongoing. DOSH found almost three violations per not-in-compliance inspection. Of the violations issued last year, 22% were characterized as serious, willful, or repeat.

The good news is that employers abated 76% of S-W-R violations before DOSH issued the citations. Almost two-thirds of all violations were abated before issuance. The percentage of conditions that stay abated remains high – 84% of S-W-R and 81% for all violations.

Cal/OSHA Inspections, Top 10 Sectors



Cal/OSHA Violations, Top 10 Sectors



● 2015 ● 2016 ● 2017 ● 2018 ● 2019 ● 2020 ● 2021 ● 2022 ● 2023 Q1

Indoor Heat

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Indoor work areas subject to Assessment and Control Measures provisions (subsection (e)) include:

- Indoor work areas where the temperature is at least 87°F when employees are present;
- The heat index equals or exceeds 87°F,
- Employees wear clothing that restricts heat removal, or work in a high-radiant-heat area and the temperature is at least 82°F;
- Any other setting identified in writing by the Division of Occupational Safety and Health through

a Special Order.

(b) Employees required to have access to potable water that is fresh, pure, suitable cool and free of charge, as close as practicable to the areas where employees are working and in indoor cool-down areas. Where it is not continuously supplied, it shall be provided at one quart per hour per employee per shift. Employers are to encourage employees to frequently consume water.

(c) Employers also shall have and maintain at least one cool-down rest area at all times when employees are present, and allow and encourage employees to take

		Relative Humidity%																			
		5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100
81		78	79	79	79	79	80	80	81	81	82	82	83	84	85	86	86	87	88	90	91
82		79	79	80	80	80	80	81	81	82	83	84	84	85	88	88	89	90	91	93	95
83		79	80	80	81	81	81	82	82	83	84	85	86	87	90	90	91	93	95	97	99
84		80	81	81	81	82	82	83	83	84	85	86	88	89	92	93	94	96	98	100	103
85		81	81	82	82	82	83	84	84	85	86	88	89	91	95	96	97	99	102	104	107
86		81	82	83	83	83	84	85	85	87	88	89	91	93	95	97	100	102	105	108	112
87		82	83	83	84	84	85	86	87	88	89	91	93	95	98	100	103	106	109	113	116
88		83	84	84	85	85	86	87	88	89	91	93	95	98	100	103	106	110	113	117	121
89		84	84	85	85	86	87	88	89	91	93	95	97	100	103	106	110	113	117	122	
90		84	85	86	86	87	88	89	91	93	95	97	100	103	106	109	113	117	122	127	
91		85	86	87	87	88	89	90	92	94	97	99	102	105	109	113	117	122	126	132	
92		86	87	88	88	89	90	92	94	96	99	101	105	108	112	116	121	126	131		
93		87	88	89	89	90	92	93	95	98	101	104	107	111	116	120	125	130	136		
94		87	89	90	90	91	93	95	97	100	103	106	110	114	119	124	129	135	141		
95		88	89	91	91	93	94	96	99	102	105	109	113	118	123	128	131	140			
96		89	90	92	93	94	96	98	101	104	108	112	116	121	126	132	138	145			
97		90	91	93	94	95	97	100	103	106	110	114	119	125	130	136	143	150			
98		91	92	94	95	97	99	102	105	109	113	117	123	128	134	141	148				
99		92	93	95	96	98	101	104	107	111	115	120	126	132	138	145	153				
100		93	94	96	97	100	102	106	109	114	118	124	129	136	143	150	158				
101		93	95	97	99	101	104	108	112	116	121	127	133	140	147	155					
102		94	96	98	100	103	106	110	114	119	124	130	137	144	152	160					
103		95	97	99	101	104	108	112	116	122	127	134	141	148	157	165					

The indoor heat illness proposal includes a heat index chart from the National Weather Service.



a preventative cool-down rest when they feel the need to do so to protect from overheating.

Such individuals who take such rests shall be monitored and asked if they are experiencing heat illness, shall be encouraged to remain in the cool-down area, and shall not be ordered back to work until signs/symptoms of heat illness have abated. If an employee exhibits signs and symptoms while taking a rest, the employer shall provide appropriate first aid or emergency response.

(d) Assessment and control measures: Where these procedures are applicable, the employer shall measure the temperature and heat index and record whichever is greater; also identify and evaluate all other environmental risk factors for heat illness. Measurements shall be recorded, including the date, time and locations. They must be taken where employees are working and when exposures are expected to be the greatest.

The standard requires the “active involvement” of employees and union representatives in planning, conducting and recording the measurements, plus identifying and evaluating other environmental risk factors.

(e) Employers shall use control measures to minimize the heat illness risk, including:

Engineering controls: Methods of control or devices that remove or reduce hazardous conditions or create a barrier between the employee or hazard. Examples include isolating hot processes or isolating employees from heat sources; air conditioning, cooling fans, mist fans, swamp coolers, natural ventilation (when the outside temperature is cooler); local exhaust ventilation; shielding from a radiant heat source; and insulation of hot surfaces.

Administrative controls: Methods to limit exposure by adjusting work procedures, practices or schedules. Examples include acclimation; rotating employees; scheduling work for cooler periods; using work/rest schedules; reducing the intensity or speed of the work; or the work hours; changing required work clothing; and using relief employees.

Personal heat-protective equipment: Water- and air-cooled garments, cooling vests, wetted-over garments, heat-reflective clothing and supplied-air personal cooling systems. These measures are to be used only when engineering and administrative controls are not sufficient.

(f) Employers are required to have emergency response procedures, including:

- Effective communication by voice, observation or electronic means so that employees can contact a supervisor or emergency services when necessary.
- Responding to signs and symptoms of heat illness, including first aid and providing emergency medical services. If a supervisor observes or an employee reports signs and symptoms, he or she shall take

immediate action “commensurate with the severity of the illness.”

- Implementing emergency response procedures if severe heat illness is indicated. Such signs include limited consciousness, staggering, vomiting, disorientation, irrational behavior or convulsions.
- Monitoring employees exhibiting signs of heat illness, and not leaving them alone or sending them home without being offered onsite first aid and/or emergency medical services.
- Ensuring that clear and precise directions to the worksite to emergency responders.

(g) Close observation during acclimation: If no “effective” engineering controls are in use, all employees shall be closely observed during a heat wave. Newly assigned employees are to be closely observed during their first 14 days of employment. Observation also required:

- In work areas where the temperature or heat index is at least 87°F, during work while wearing clothing that restricts heat removal at 82°F; or during work in a high-radiant heat area at 82°F.

(h) Training required for employees and supervisors on topics including:

- The environmental and personal risk factors for heat illness;
- The employer’s procedures for complying with the regulation;
- The importance of frequently consuming water;
- The “concept, importance and methods” of acclimation and close observation;
- The types, signs and symptoms of heat illness, and appropriate first aid/emergency response, and the employer’s emergency response procedures, including providing clear and precise directions;
- The importance of immediately reporting signs and symptoms; and
- For supervisors, the procedures they must follow.

(i) Employers are required to establish, implement and maintain an effective Heat Illness Prevention Plan in English and the language understood by the majority of the employees. The plan must be made available upon request to employees and DOSH. The plan may be standalone or incorporated into the employer’s Injury and Illness Prevention Program.

The plan at a minimum must contain procedures for the provision of water, access to cool-down rest areas, procedures to measure the temperature and heat index, emergency response, and for close observation during acclimation.

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