

SUMMARY OF COMMENTS AND AGENCY DECISIONS

Title: Rules to Address Employee and Labor Housing Occupant Exposure to High Ambient Temperatures

Department of Consumer & Business Services
Oregon Occupational Safety & Health Division

Administrative Order Number: AO 3-2022

Adopted Date: May 9, 2022

Effective Date: June 15, 2022

1. Executive Summary

Every year, people die in occupational settings from exposure to excessive heat and many more suffer a heat-related illness; most of these are preventable. Between October 2019 and July 2021, 37 fatalities were reported to the Occupational Safety and Health Administration (OSHA) and at least four heat-related fatalities occurred in Oregon.¹ According to OSHA, outdoor workers have suffered heat-related illnesses in agriculture, construction, landscaping, mail and package delivery, and oil and gas well operations, and in indoor industries such as bakeries, kitchens, and laundries (with indoor heat-generating appliances), electrical utilities (particularly boiler rooms), fire service, iron/steel mills and foundries, manufacturing with hot local heat sources like furnaces, and warehousing.²

Federal OSHA's Heat Illness Prevention campaign, launched in 2011, educates employers and workers on the dangers of working in the heat. Oregon OSHA – a division of the Oregon Department of Consumer and Business Services – has historically applied its workplace health and safety jurisdiction to worksite heat exposures through the application of a statewide Local Emphasis Program³ for preventing heat related illness in the state of Oregon. This emphasis program was updated in 2021 to integrate Oregon OSHA's temporary heat rule requirements. The program directive states: "since July of 2017, Oregon OSHA has focused on heat related illness in all inspections from June 15 – October 1 by providing guidance and education to employers in relation to heat related illness. In 2021, a deadly heat event in the Pacific Northwest set record-breaking temperatures in Oregon. On June 28th, Portland International Airport reached 116 °F and other parts of the state were even hotter. This extreme hot weather will happen again, and it has made it necessary to enact protections to ensure the health and safety of workers. On July 8, 2021, Oregon OSHA adopted a temporary standard for Heat Illness Prevention that was in effect until January 3, 2022." ⁴

Currently, only California and Washington have occupational health and safety standards to protect workers from heat-related illness. However, these rules only apply

in outdoor settings. Like Oregon, Minnesota has a standard to protect workers from exposure to high heat in indoor places of employment. Virginia, Maryland, and Nevada have recently announced their intentions to promulgate heat-related standards.

Currently, federal OSHA does not have a specific standard for hazardous heat conditions. However, in September 2021, federal OSHA announced that is initiating rulemaking to protect indoor and outdoor workers from hazardous heat.⁵ Also in September 2021, federal OSHA announced the establishment of an enforcement initiative to prevent and protect employees from serious heat-related illnesses and deaths while working in hazardous hot indoor or outdoor environments. “The initiative prioritizes heat-related interventions and inspections of work activities on days when the heat index exceeds 80 °F.”⁶

Executive Order 20-04⁷ was signed by Governor Brown on March 10, 2020. It is intended to build on Executive Order 17-20,⁸ and further Oregon’s goal of reducing greenhouse gas emissions. The Executive Order provided 13 directives to multiple state agencies, and included a directive to the Oregon Health Authority (OHA) and the Oregon Occupational Safety and Health Division (Oregon OSHA) to jointly develop standards to protect workplace employees from exposure to wildfire smoke and excessive heat. In response to EO 20-04, Oregon OSHA, in collaboration with OHA, advisory committees, and stakeholders, worked towards developing two separate proposed standards to protect workers from illness due to exposure to high heat and wildfire smoke.

2. Summary of Oregon OSHA’s Statutory Authority and Obligations under the OSEA

The purpose of the Oregon Safe Employment Act (OSEA) and of all rules adopted under that law is found in ORS 654.003, which describes the law’s general purpose as

... to assure as far as possible safe and healthful working conditions for every working person in Oregon, to preserve our human resources and to reduce the substantial burden, in terms of lost production, wage loss, medical expenses, disability compensation payments and human suffering, that is created by occupational injury and disease.

In discussing that purpose, ORS 654.003(3) states that one of the Legislative Assembly’s intents is to “[a]uthorize the Director of the Department of Consumer and Business Services and the designees of the director to set reasonable, mandatory, occupational safety and health standards for all employments and places of employment.”⁹

This general statement about rulemaking is further amplified by ORS 654.035(1), which indicates that the director may

(a) Declare and prescribe what devices, safeguards or other means of protection and what methods, processes or work practices are well adapted to render every employment and place of employment safe and healthful.

(b) Fix reasonable standards and prescribe and enforce reasonable orders for the adoption, installation, use and maintenance of devices, safeguards and other means of protection, and of methods, processes and work practices, including, but not limited to, work practices qualifications for equipment, materials and activities requiring special competence, to be as nearly uniform as possible, as may be necessary to carry out all laws relative to the protection of the life, safety and health of employees.

(c) Fix and order reasonable standards for the construction, repair and maintenance of places of employment and equipment that will render them safe and healthful.

(d)

(e) Require the performance of any other act that the protection of the life, safety and health of employees in employments and places of employment may demand.

The heat rules explicitly addresses “safe and healthful working conditions” in Oregon, and it represents Oregon OSHA’s determination of appropriate “safeguards or other means of protection...well adapted to render...safe and healthful” the affected workplaces.

The OSEA also provides for consultation with stakeholder advisers to assist “in establishing standards of safety and health,” indicating that Oregon OSHA “may adopt and incorporate in its regulations, rules and standards such safety and health recommendations as it may receive from such advisers.”¹⁰

3. Summary of Administrative Procedures Act (APA) Requirements

The rulemaking provisions of the Oregon Administrative Procedures Act¹¹ include a number of provisions related to public notice and comment periods, explaining the circumstances where the agency can take immediate action or where the agency can dispense with the need for public hearings. In relation to the current rulemaking, those latter exceptions to public hearing requirements do not apply and the agency has not suggested otherwise.

The law both encourages and, in some respects, requires that affected stakeholders be involved in the development of proposed rules¹² – the current proposal is the product of an almost year-long process of discussions with stakeholders to explore the issues involved. The law requires that notice be given when a proposal is made¹³ and Oregon OSHA gave such notice.¹⁴ The law requires that a set of specific elements be included

in the notice¹⁵ particularly in relation to the anticipated fiscal impact of the proposal.¹⁶ The law does not require a discussion of the merits of the rule – beyond the initial Statement of Need filed with the original proposal – nor does it require a written response to the public comments provided in writing or in public testimony. Finally, the law does not require an evidentiary record nor a written explanation of the decision made.¹⁷ However, as has been its practice in the past, Oregon OSHA has provided such an explanation and discussion of the available evidence in the form of this document.

The law does include a policy statement that state agencies “shall seek to retain and promote the unique identity of Oregon by considering local conditions” when adopting rules, while at the same time promoting a policy “that agencies attempt to adopt rules that correspond with equivalent federal laws and rules.”¹⁸ As noted above, there is no federal law that protects employees from exposure to high heat.

Finally, the law prescribes the manner in which notice of the rulemaking decision will be made,¹⁹ and Oregon OSHA has complied with those requirements as part of the rule adoption filing.

4. History of the Current Rulemaking

Shortly after Executive Order 20-04 was issued, Governor Kate Brown issued a State of Emergency in Oregon related to the COVID-19 global pandemic. The pandemic delayed the start of this rulemaking activity until March 2021. Oregon OSHA convened nine Rules Advisory Committee (RAC) meetings over an eight-month period. In the interim, in July 2021, Oregon OSHA temporarily adopted OAR 437-002-0155 and 437-004-1130: Temporary Rules to Address Employee Exposure to High Ambient Temperatures (Administrative Order 6-2021) and in August 2021, Oregon OSHA temporarily amended OAR 437-004-1120 to Address High Ambient Temperatures in Labor Housing (Administrative Order 8-2021).

On January 28, 2022, Oregon OSHA filed proposed rules with the Oregon Secretary of State to address employee and labor housing occupant exposure to high ambient temperatures. Oregon OSHA sought public input on the proposed rules in a variety of ways through mid-March 2022. Oral comments were accepted by voicemail message, and during three virtual public hearings (one of which was conducted in Spanish) that were convened the last week in February 2022. The formal public comment period closed on March 18, 2022.

During the public comment period, Oregon OSHA received over 300 comments on the proposed heat rules. Approximately 170 opposed the rules in some form and 145 supported it with some modifications, but the rule adoption process is not a tally of supporters vs. opposed but rather about the merits of the comments. The record includes a number of “form emails” and other standardized communications. A fiscal analysis was prepared prior to proposing the rules; Oregon OSHA has analyzed and

considered potential costs. Oregon OSHA has determined that, while the costs of complying with the rules are likely to be meaningful, they are also manageable and that the rules provide more than sufficient value to justify those costs. Considering the record in its totality, and having evaluated the arguments made by all the commenters in the extensive rulemaking record, Oregon OSHA is ultimately persuaded that the rule is both reasonable and practical. The scope of the rulemaking decision being made by Oregon OSHA in this instance is limited in at least three important ways:

- First, Oregon OSHA's expertise and rulemaking authority is limited by its worker protection mission – the Oregon Safe Employment Act provides a broad, but not unlimited, mandate.
- Second, Oregon OSHA's rulemaking authority is limited by its specific ability to regulate safe and healthy work practices – not to prohibit certain types of work.
- Third, Oregon OSHA's decision on the present rules is limited by the public notice requirements of the Administrative Procedures Act, which restricts an agency's ability to adopt a rule that does not fall within the general notice parameters of the rule as it was originally proposed, including the fiscal analysis.

Oregon OSHA endeavors to make its decisions with as complete an understanding of the available information, including research, related to the subjects at hand. Oregon OSHA does recognize that science will generally not itself dictate policy decisions, and the answers to certain questions may at times be either unclear or unavailable. Nonetheless, policy decisions should be informed by the available science and made in a manner that reflects an understanding of the science involved. The present rulemaking is firmly rooted in such an understanding of the relevant science.

5. Description of the Rules as Adopted

The rules as adopted are consistent with the rules as proposed in its overall approach and with regard to most specific elements, which are summarized below:

- Like the proposal, the rules apply whenever an employee performs work activities, whether in indoor or outdoor environments, when the heat index equals or exceeds 80 degrees Fahrenheit.
- Like the proposal, the rules have full and partial exemptions. The full exemptions are: incidental heat exposures where an employee is not required to perform work activities for more than 15 minutes in any sixty-minute period; exposures to heat generated from the work process, such as occurs in bakeries. As a result of requests received from stakeholders, the following note in section (1) was modified into a full exemption for buildings and structures that have a mechanical ventilation system that maintains the heat index below 80 degrees Fahrenheit. In such cases, employers must follow the requirements of Division 2, Subdivision J,

OAR 437-002-0144(2); and all emergency operations that are directly involved in the protection of life or property, or the restoration of essential services, such as evacuation, rescue, medical, structural firefighting, law enforcement, utilities, and communications, when employees are engaged in those operations. The partial exemptions are: employers whose employees perform either “rest” or “light” workloads (See Table 1.1 - Metabolic Heat and Workload - under section 1 in Appendix A: Information for Heat Illness Prevention) are exempt from the requirements of sections (3) through (10) only when the heat index is less than 90 degrees Fahrenheit; associated support activities for wildland firefighters such as fire camp services and fire management are exempt only from the requirements of section (7); and employees who work from home are subject only to the training requirements in sections (9) and (10).

- Like the proposal, the rules contains a Definitions section (2). This section is largely unchanged. However, the definition of “feasibility” was removed.
- Like the proposal, section (3) Access to shade, is largely unchanged.
- Like the proposal, section (4) Drinking water, is largely unchanged.
- Like the proposal, section (5) High heat practices, is largely unchanged. However, the first option for employers (an employer-specific heat illness prevention rest break schedule) was rearranged to provide clarity for employers and Table 1 was moved to below the four items that employers need to integrate into their employer-specific heat illness prevention rest break schedule. Additionally, notes were added to section (5) High-heat practices. Lastly, two notes that were in the proposal were turned into rule requirements.
- Like the proposal, section (6) Emergency Medical Plan, is largely unchanged; however, applicable standards outside of these rules were added for ease to the reader.
- Like the proposal, section (7) Acclimatization Plan, is largely unchanged. However, a note was added to this section.
- Like the proposal, section (8) Heat Illness Prevention Plan, is largely unchanged.
- Like the proposal, section (9) Supervisor and employee training, is unchanged.
- Like the proposal, section (10) Training documentation, is unchanged.

6. Appropriate Consideration and Evaluation of Public Comments on the Adoption of OAR 437-002-0156 & 437-004-1131: Rules to Address Employee Exposure to High Ambient Temperatures

6.1 Administrative Procedures Act (APA) Requirements

Oregon OSHA received a comment alleging that Oregon OSHA failed to follow the APA, specifically ORS § 183.335(2)(d): “When providing notice of an intended action under subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt ... or an explanation of how the person may acquire a copy of the rule”, by failing to publish tables located within the rule. The information provided

by the Secretary of State indicates that additional information can be found on the agency's website. Oregon OSHA followed the requirements of the APA by providing proper notice through the Oregon Secretary of State and the filing attachments that contained the tables were posted on Oregon OSHA's website on the proposed rules webpage – including a full text of changes, to enable easy access by interested parties. It is clear that this commenter was able to view the necessary tables, as comments were included relating to the tables and they acknowledged where the tables were located. Additionally, an overwhelming portion of all comments received included comments regarding the tables.

6.2 Scope and application

Oregon OSHA received a few comments from employer advocates that the scope of the rule should be limited to outdoors only, similar to California's Heat Illness Prevention in Outdoor Places of Employment standard. Washington's Emergency rule from 2021 also is limited to outdoor work environments. Oregon OSHA believes that it is important to have protective measures that affect both indoor and outdoor workers. Recently, Washington indicated during their permanent rulemaking process that they intend to cover indoor work environments as well. The scope of the adopted rule remains as it was proposed.

Oregon OSHA received one comment suggesting that the lower threshold for the rules should be a heat index of 90 degrees Fahrenheit. In contrast, Oregon OSHA received several comments stating that the scope of the Heat Illness Prevention rules should be voluntary until the heat index reaches 100 degrees Fahrenheit. These comments were considered, and Oregon OSHA believes that the scientific evidence to have protective measures in place at a heat index of 80 degrees Fahrenheit is appropriate and no adjustments were made to the threshold.

In a paper titled *Actual and simulated weather data to evaluate wet bulb globe temperature and heat index as alerts for occupational heat-related illness*, the authors examined 234 outdoor heat-related illnesses reported to federal OSHA since January 2015. After excluding some of the data for various reasons (i.e. non-heat-related events and indoor work) and after characterizing the outdoor heat-related illnesses and analyzing the weather data, the authors proposed a heat index alert at 80 degrees Fahrenheit, when wet-bulb globe temperature is unavailable, as most scientifically-appropriate.²⁰

Oregon OSHA received many comments that Oregon OSHA does not have the regulatory authority to regulate "environmental hazards." Hazards created by the environment have been addressed in a number of Oregon OSHA rules including, but not limited to, silica, wind speed affecting the safe operation of cranes, danger trees associated with forest activities, ice on scaffolding, and exposure to heavy metals. In response, it is the position of Oregon OSHA that regulating employee safety and health in the workplace falls under Oregon OSHA's regulatory authority, as described above.

6.3 Exemptions

Oregon OSHA received comments regarding confusion of when OAR 437-002-0144 applies versus the proposed heat rule.

A note was added to clarify when the rule related to hot processes applies. It is Oregon OSHA's intention that heat that is generated only by the processes will be covered by OAR 437-002-0144(2). However, when additional heat is introduced into the workplace outside of the hot process, then this rule would apply as well.

Note: When another applicable standard addresses other hazards that may be present, employers must comply with the requirements of that standard and this standard. Where the requirements of one standard are more protective than another for the same hazard, employers must follow the requirements that provides the higher level of employee protection.

6.4 Partial Exemptions

Oregon OSHA received a large number of comments to remove the partial exemption for "light" work. Oregon OSHA collaborated with OHA to develop this partial exemption for "rest" and "light" work, as determined by the metabolic rate (in watts). Oregon OSHA also received a question as it relates to "rest" and "light" work, as follows: "what happens when employees move between different categories of work?" In response, Oregon OSHA understands that throughout a work shift, employees may often move between different categories of work. One way that Oregon OSHA responded to these comments and question was to provide the full table copied from OSHA's guidance on Heat Hazard recognition (which can be accessed at: <https://www.osha.gov/heat-exposure/hazards>). The full table provides additional details and categories of work, so that employers and employees can compare the differences. By being able to better identify the workloads experienced by employees, when doing different and varying work tasks, employers will be better able to protect employees from a heat-related illness.

Oregon OSHA received considerable comments from worker advocacy groups relating to "rest" or "light" work. The commenters were concerned about different requirements for the various workloads and that all provisions should be applicable to every worker. A common concern was access to drinking water, and although the rule would not apply to the specific provision of how much water is needed to be provided – employers are already required to provide water under other Oregon OSHA requirements. In addition, the examples in table 1.1 in the Appendix listed as "rest" or "light" are narrow, and most of the scenarios suggested from comments would not fall under the "rest" or "light" categories of the NIOSH table replicated in the rule. Most of the scenarios described by commenters would be moderate or higher, in which case employers are expected to follow the entire rule set.

In a paper titled *Actual and simulated weather data to evaluate wet bulb globe temperature*, the authors examined 234 occupational heat related illnesses reported to federal OSHA in 2016 that resulted in either hospitalizations (n=217) or fatalities (n=17).²⁰ The authors estimated that in 168 (77%) of hospitalizations, workers were performing work in either “moderate”, “heavy”, or “very heavy” workloads, and for fatalities, the authors estimated that 13 (76%) of fatalities occurred when workers were performing work in either “moderate”, “heavy”, or “very heavy” workload categories.

In a paper titled *Risk Factors for Heat-Related Illness in U.S. Workers An OSHA Case Series*, the authors reviewed “all HRI enforcement consultations undertaken by the Office of Occupational Medicine and Nursing (OOMN), an office of Federal OSHA, between 2011 and 2016.”²¹ The authors concluded that out of 21 heat-related fatalities, 20 occurred when workers were performing work in either “moderate”, “heavy”, or “very heavy” workload categories. Out of 30 non-fatal heat-related illnesses, 26 occurred when workers were performing work in either “moderate” or “heavy” workload categories.

6.5 Definitions

Oregon OSHA received comments from both worker advocates and employer advocates expressing concern with the definition of “feasibility.” Oregon OSHA already evaluates whether something is feasible on a case-by-case basis. In response, Oregon OSHA has removed the definition of “feasibility” and the word from the rules as it is unnecessary. Additional details were added to the circumstances that utilized the word “feasibility” to provide more clarifying details as to what is expected.

Oregon OSHA also added a definition for “temperature-controlled environment.”

6.6 Shade

Oregon OSHA received comments that stated that providing shade is infeasible, particularly in the construction and transportation industries. One supporter of the rule suggested that employees should be able to rest in the shade “without touching each other.” Many of those comments that are in opposition of the proposed rule stated that Oregon OSHA should model California’s provisions for shade. After considering these comments, the language defining shade is adopted as proposed.

6.7 Water

Oregon OSHA received comments from farmworkers that water is not always provided. Oregon OSHA received comments from employer advocates suggesting that employees be allowed to furnish their own water. After considering these comments, the language defining shade is adopted as proposed.

In some specific workplaces, it might make sense for employers to make arrangements with employees to provide their own drinking water, at least in part, such as; those employees that might leave directly from their homes to the worksite; or employees who

have mobile worksites; or those employees that may work alone. However, this must be done at no cost to the employee. An employee is under no obligation to agree to the arrangements with their employer. An employee must feel free to decide for themselves, without fear of retaliation by their employer, how they may obtain drinking water.

It is important to note that potable water is required under 29 CFR 1910.141(b)(1)(i) Sanitation, “potable water shall be provided in all places of employment, for drinking, washing of the person, cooking, washing of foods, washing of cooking or eating utensils, washing of food preparation or processing premises, and personal service rooms.”²² Additionally, the provisions for providing water also exist in Oregon OSHA’s Division 3 Construction²³ and Division 4 Agriculture²⁴ rules. Nothing in these adopted rules should undermine the provisions that are already required, but rather these rules are in addition to those requirements.

6.8 High heat practices

Oregon OSHA received comments suggesting that section (5)(e)(A) be removed from the rule due to concerns that option (A) provided insufficient lengths of the heat illness prevention rest breaks, while other comments indicated that the language in option (A) was not specific enough. In response, Oregon OSHA updated the language to provide clarity regarding the expectations under option (A), but the agency also recognizes that it is important to maintain it as an option for flexibility given the various work environments across the state.

Oregon OSHA received multiple comments that the agency should consider the effect of working in direct sunlight on employees as it relates to the heat illness prevention rest breaks. The fiscal assessment did not include direct exposure to sunlight in its calculations for the minimum requirements, therefore Oregon OSHA is unable to adopt this request at this time without re-proposing the rule, which would prevent protections from heat from being in place for the upcoming season. However, a note was added to encourage the assessment of direct sun exposure into the overall calculation. The note states “Employers should consider the effect of exposure to direct sunlight when developing an employer-specific heat illness prevention rest break schedule”, and the same note was added to the acclimatization plan section. Additionally, if an employer chooses (5)(e)(B) -NIOSH work/rest schedule, one of the considerations is whether full sunlight (or clouds) are present.

Oregon OSHA received a number of comments from worker advocates that “work should stop at 90 degrees Fahrenheit” and that “workers should be sent home.” Oregon OSHA does not prohibit work but rather provides for appropriate safety and health requirements to protect workers from the hazards.

Oregon OSHA received questions regarding the application of administrative controls, for example moving work to the earlier part of the day and what are the appropriate actions if an employee refuses to modify their schedule. This is an issue that employers

should consult with the Oregon Bureau of Labor & Industries or with a labor attorney, as it is outside of the authority of Oregon OSHA to identify an appropriate response.

Considerable comments were received related to Oregon OSHA's ability to create new rest break responsibilities. In this context, Oregon OSHA is not referencing labor laws but rather is focusing on heat illness prevention rest breaks as a work assignment, much like how the division approaches the time required for donning/doffing of personal protective equipment (PPE) to protect a worker from injury or illness.

6.9 Acclimatization Plan

Oregon OSHA received comments that employees should not lose pay due to having to acclimate, and comments that Oregon OSHA should keep the language from the temporary heat rule or model California's acclimatization section. Oregon OSHA recognizes that there is no 'one-size-fits-all' approach when it comes to acclimating employees, as this may vary depending on factors such as the differences in regional weather patterns, the type of work being performed, the type of work clothing worn, whether an individual is fit or not, and whether workers are acclimated or not. Oregon OSHA has provided the framework for both employers and employees on how to accomplish acclimatization.

In a report published by the Centers for Disease Control (CDC) titled *Heat Illness and Death Among Workers — United States, 2012–2013*, the authors reviewed “federal enforcement cases (i.e., inspections) resulting in citations under paragraph 5(a)(1), the “general duty clause” of the Occupational Safety and Health Act of 1970; this review examined 20 cases during this two-year period.²⁵ Out of these 20 cases, none of the employers had an acclimatization program, and there were 13 fatalities; in nine cases, workers were on the job for three days or less. The authors acknowledge that their findings have at least three limitations. “First, information collected retrospectively might fail to identify important elements such as individual prior acclimatization that might have been missed by OSHA Compliance Safety and Health Officers. Second, information from weather websites regarding past weather conditions relatively close to the worksite under consideration might not accurately represent conditions at the worksite itself (especially because at least one of the weather stations was more than 100 miles from the worksite) and thus might fail to identify the actual impact of weather. Finally, OSHA Compliance Safety and Health Officers performing workplace inspections might have missed program elements identified by the Heat Illness Workgroup because these elements were not part of routine information collection.”

6.10 Heat Illness Prevention Plan

Oregon OSHA received a public comment from a federal employee and while federal employees do not fall under Oregon OSHA's regulatory authority, the comment may potentially affect Oregon employees and an employer's ability to comply with the Heat Illness Prevention rule. The commenter mentioned that some employees may be subjected to a collective bargaining agreement. The commenter expressed concern for

organizations that may not be able to negotiate protections for workers that are as protective as the heat illness prevention rule. If an Oregon OSHA rule applies in a workplace the employer is expected to follow all requirements of the standard regardless of provisions contained in a collective bargaining agreement.

6. 11 Training documentation

Oregon OSHA received one question related to documenting heat illness prevention training electronically. As long as those records maintain all required elements of the rule and employees have access, employers may keep them in any format.

7. Appropriate Consideration and Evaluation of Public Comments on the Amendment of OAR 437-004-1120: Agricultural Labor Housing and Related Facilities to include Heat Illness Prevention provisions

7. 1 Cooling areas

Oregon OSHA received five comments from worker advocates regarding the capacity of the cooling area in employer-provided housing. Commenters recommended changing the capacity requirement of the cooling area from 50% of occupants to 100%. Multiple comments questioned what the workers would do or how they would cool down if there wasn't continual space for all occupants. Oregon OSHA is currently meeting with stakeholders on a variety of issues regarding labor housing and these issues (regarding heat) will be carried over to those discussions through the Agriculture Labor Housing Advisory Committee.

Oregon OSHA received 12 comments from worker advocates requesting that mechanical ventilation be required in labor housing rather than being optional. Multiple commenters stated that there is no evidence that misters or shade are adequate. One comment recommended that Oregon OSHA study the efficacy of these rules. Along with the issue of capacity and cooling, these issues will be addressed during the ongoing labor housing rulemaking process through the Agriculture Labor Housing Advisory Committee.

7.2 Access to emergency services

Oregon OSHA received one comment supporting the requirement for a working telephone, requesting that labor housing occupants be told of the location of the telephone. While the language does not explicitly address this suggestion of notifying the occupants of its location, a telephone is required under OAR 437-004-1120(25)(e) and under BOLI requirements OAR 839-014-0610(1).

8. References

1. Fatality Inspection Data Work-related fatalities for cases inspected by Federal or State OSHA. Retrieved April 11, 2022. <https://www.osha.gov/fatalities> Note; according to OSHA, The information is not comprehensive and will continue to be updated as data becomes available.
2. Occupational Safety and Health Administration. Heat - Overview: Working in Outdoor and Indoor Heat Environments. Retrieved April 11, 2022. <https://www.osha.gov/heat-exposure#:~:text=Although%20illness%20from%20exposure%20to%20heat%20is%20preventable%2C,a%20tolerance%20to%20the%20heat%20gradually%20over%20time>
3. OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION DEPARTMENT OF CONSUMER AND BUSINESS SERVICES - Local Emphasis Program (LEP): Preventing Heat Related Illness. <https://osha.oregon.gov/OSHARules/pd/pd-299.pdf>
4. Adoption of Temporary Rules to Address Employee Exposure to High Ambient Temperatures - <https://osha.oregon.gov/OSHARules/adopted/2021/ao6-2021-text-heatillnessprevention.pdf>
5. Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings; A Proposed Rule by the Occupational Safety and Health Administration. Federal Register / Vol. 86, No. 205 / Wednesday, October 27, 2021. <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-23250.pdf>
6. United States Department of Labor, Occupational Safety and Health Administration. Inspection Guidance for Heat-Related Hazards. Retrieved April 11, 2022. <https://www.osha.gov/laws-regs/standardinterpretations/2021-09-01>
7. Office of the Governor State of Oregon. Executive Order No. 20-04 DIRECTING STATE AGENCIES TO TAKE ACTIONS TO REDUCE AND REGULATE GREENHOUSE GAS EMISSIONS <https://www.oregon.gov/bcd/Documents/eo-energy-20-04.pdf>
8. Office of the Governor State of Oregon. Executive Order No. 17-20 ACCELERATING EFFICIENCY IN OREGON'S BUILT ENVIRONMENT TO REDUCE GREENHOUSE GAS EMISSIONS AND ADDRESS CLIMATE CHANGE https://www.oregon.gov/gov/Documents/executive_orders/eo_17-20.pdf
9. The Director has, in turn, used the authority of ORS 654.025(2) and (5) to delegate the authority to implement and enforce the Oregon Safe Employment

Act to the Administrator of the Occupational Safety and Health Division (Oregon OSHA) and has delegated his rulemaking authority under the OSEA to the Oregon OSHA Administrator.

10. Oregon safe Employment Act (OSEA) Chapter 654 — Occupational Safety and Health, 2021 EDITION. ORS 654.090(2)
https://www.oregonlegislature.gov/bills_laws/ors/ors654.html
11. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties 2021 EDITION. ORS 183.325 to 405
https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
12. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties. ORS 183.333. https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
13. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties. ORS 183.335. https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
14. <https://osha.oregon.gov/OSHARules/proposed/2022/ltr-proposed-heat-exposure.pdf>
15. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties. ORS 183.335. https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
16. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties ORS 183.335(2)(b)(E), ORS 183.336, ORS 183.530, and ORS 183.534.
https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
17. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties ORS 183.335(13). https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
18. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties. ORS 183.332. https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
19. Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties ORS 183.355. https://www.oregonlegislature.gov/bills_laws/ors/ors183.html
20. Courtney E. Morris, Richard G. Gonzales, Michael J. Hodgson, and Aaron W. Tustin. Actual and simulated weather data to evaluate wet bulb globe temperature and heat index as alerts for occupational heat-related illness. *J. Occup. Environ. Hyg.* 16(1): 54–65 (2019).

21. Aaron W. Tustin, Dawn L. Cannon, Sheila B. Arbury, Richard J. Thomas, and Michael J. Hodgson. Risk Factors for Heat-Related Illness in U.S. Workers An OSHA Case Series. *J. Occup. And Environ Med.* 60(8): e383-e389 (2018).
22. OREGON OCCUPATIONAL SAFETY AND HEALTH STANDARDS Oregon Administrative Rules, Chapter 437 DIVISION 2 (29 CFR 1910) GENERAL OCCUPATIONAL SAFETY & HEALTH RULES §1910.141(b) Water supply <https://osha.oregon.gov/OSHARules/div2/div2J.pdf>
23. OREGON OCCUPATIONAL SAFETY AND HEALTH STANDARDS Oregon Administrative Rules, Chapter 437 1926.51(a) Potable water and 437-003-0015 Drinking Water. <https://osha.oregon.gov/OSHARules/div3/div3.pdf>
24. Oregon Administrative Rules Chapter 437 Division 4 Agriculture 437-004-1105(3) Water supply <https://osha.oregon.gov/OSHARules/div4/div4.pdf>
25. Sheila Arbury, Brenda Jacklitsch, Opeyemi Farquah, Michael Hodgson, Glenn Lamson, Heather Martin, and Audrey Profitt. Heat Illness and Death Among Workers — United States, 2012 –2013. *Morbidity and Mortality Weekly Report.* 63(31): (2014).

