

By Chris Walker, Nossaman, LLP

New Heat Illness Regulations Adopted by Governor Brown Appointed OSHSB

The Occupational Safety Health Standards Board (OSHSB) voted 5-1 to adopt changes to the outdoor workplace heat illness prevention standard this past Thursday, February 19th. The new rule will become **effective for employers as soon as May 1st, 2015**.

New requirements will change how construction employers provide water, shade, rest breaks, acclimatization and training to their employees. Employers will also have to adopt Emergency Response Procedures and update their existing Heat Illness Prevention Plans (HIPP) accordingly.

CAL SMACNA joined dozens of other employer groups and businesses who supported the original rule in 2006 but were opposed to the recent adoption of new measures. We felt that Cal/OSHA had failed to demonstrate the 'necessity' for these changes or provide sufficient 'clarity' for compliance.

These concerns led the OSHSB to reject the original proposal at their San Diego hearing on September 25th. Cal/OSHA was directed to address the issues raised by employers. A revised draft with some important changes was circulated in December and again in January 2015. It was this revised document that was considered and quickly approved by Governor Brown's OSHSB last week.

In adopting these changes, the OSHSB directed staff to also fast-track the regulations through the Office of Administrative Law so they will become **effective on May 1st** before the start of this summer.

What does this mean to you?

Construction employers will need **to immediately update their Heat Illness Prevention Plan (HIPP)**. The updated HIPP must also **be available at the worksite** for review by employees and Cal/OSHA representatives. This plan will now need to be in writing in both English and the language understood by the majority of employees. The HIPP shall, at a minimum, contain:

- New procedures for the provision of water and employees access to shade;
- New high heat procedures to be followed after 95 degrees Fahrenheit;
- New emergency response procedures as required; and
- New acclimatization methods and procedures as prescribed.

See a detailed list below of the new requirements to be considered and incorporated into your updated HIPPP before May 1st.

NEW REQUIREMENTS FOR WATER, SHADE AND COOL DOWN PERIODS

- 1) **Water** – New requirements include that the water be **fresh, pure and suitably cool** and provided to employees free of charge. It also must now be located as **close as practicable** to the areas where employees are working.
- 2) **Shade** – New requirements include that shade be provided to employees at the worksite when temperatures hit **80° Fahrenheit** (NOT 85° as before). The area of shade shall be large enough to accommodate the number of employees on recovery or rest periods; and the number of employees on the meal period who remain onsite. In both cases the shaded area shall be sufficiently large so that employees can sit in a normal posture fully in the shade without having to be in physical contact with one another.
- 3) **Preventative cool down periods** – New requirements include a monitoring and supervisory role for the employer when an employee takes a preventative cool-down rest. An individual employee who takes a preventative cool-down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time needed to access the shade. Furthermore, if an employee exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest or during a preventative cool-down rest period, the employer shall provide appropriate first aid or emergency response according to their emergency response procedures.

NEW REQUIREMENTS FOR HIGH HEAT PROCEDURES

- 1) **High heat procedures** – After the heat hits 95 degrees, an employer is now required 1) to provide pre-shift meetings with employees to review heat illness issues, 2) to ensure effective employee observation/monitoring throughout the day, 3) to designate a work-site caller for emergency medical purposes, and 4) to remind employees throughout the shift to drink plenty of water.
 - a) **Pre-shift Meeting** -- The employer is responsible to conduct pre-shift meetings before the commencement of work to 1) review the high heat procedures, 2) encourage employees to drink plenty of water, and 3) remind employees of their right to take a cool-down rest when necessary.
 - b) **Supervision/Monitoring** -- The employer must provide supervision and monitoring of all employees throughout the day. This includes implementing one or more of the following:
 - i) Supervisor or designee observation of 20 or fewer employees, or
 - ii) Mandatory buddy system, or
 - iii) Regular communication with sole employee such as by radio or cellular phone, or
 - iv) Other effective means of observation.

- c) Designate a Caller -- The employer must also designate one or more employees on each worksite as authorized to call for emergency medical services, and allowing other employees to call for emergency services when no designated employee is available.
- d) Reminders -- Employers must also remind employees throughout the shift to drink plenty of water.

NEW EMERGENCY RESPONSE REQUIREMENTS

- 1) **Emergency Response Procedures** – As a subcomponent of a written Heat Illness Prevention Plan, employers must establish and implement a set of emergency response procedures including:
 - a) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable. If an electronic device will not furnish reliable communication in the work area, the employer will ensure a means of summoning emergency medical services.
 - b) Responding to signs and symptoms of possible heat illness, including but not limited to first aid measures and how emergency medical services will be provided.
 - i) If a supervisor observes, or any employee reports, any signs or symptoms of heat illness in any employee, the supervisor shall take immediate action commensurate with the severity of the illness.
 - ii) If the signs or symptoms are indicators of severe heat illness (such as, but not limited to, decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior or convulsions), the employer must implement emergency response procedures.
 - iii) An employee exhibiting signs or symptoms of heat illness shall be monitored and shall not be left alone or sent home without being offered onsite first aid and/or being provided with emergency medical services in accordance with the employer's procedures.
- 2) Contacting emergency medical services and, if necessary, transporting employees to a place where they can be reached by an emergency medical provider.
- 3) Ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders.

NEW ACCLIMATIZATION REQUIREMENTS

- 1) **Acclimatization** – This is a new requirement during “heat wave” conditions. These are as follows:
 - a) All employees shall be closely observed by a supervisor or designee during a heat wave. For purposes of this section only, “heat wave” means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

- b) An employee who has been newly assigned to a high heat area shall be closely observed by a supervisor or designee for the first 14 days of the employee's employment.

NEW TRAINING REQUIREMENTS

- 1) **Training**-- In addition to the existing training requirements, employers now need to educate their all employees on the following:
 - a) The employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without retaliation;
 - b) Concept, importance, and methods of acclimatization pursuant to the employer's procedures; and
 - c) Appropriate first aid and/or emergency responses to the different types of heat illness, and
 - d) The knowledge that heat illness may progress quickly from mild symptoms and signs to serious and life threatening illness.