

July 7, 2025

Eric Berg
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Submitted electronically: EBerg@dir.ca.gov

**RE: PROPOSED DRAFT CHANGES FOR AB 2243 IMPLEMENTATION REGARDING
WORKPLACE HEAT ILLNESS PREVENTION STANDARDS IN INDOOR AND OUTDOOR
PLACES OF EMPLOYMENT**

Dear Deputy Chief Berg:

The California Chamber of Commerce and the undersigned organizations submit this letter to comment on the proposed draft changes for implementation of AB 2243 regarding changes to the Heat Illness Prevention Standards in Indoor/Outdoor Places of Employment (Sections 3395 & 3396, respectively) and Wildfire Smoke (collectively, “the Standards”).

As an initial matter: though we acknowledge that the Division must include certain elements in its proposed language pursuant to AB 2243, we believe that the proposed language exceeds those required changes to the Standards. In this letter, we will limit our comments to where we believe such suggestions exceed AB 2243’s mandate and the Division has discretion in its proposal to the Standards Board. To be clear: though we may oppose some of the proposals which AB 2243 mandates that the Division propose to the Standards Board¹—but will not do so in this letter, given the legal constraints placed on the Division’s discretion.

Comments on the Proposed Revisions to the Outdoor Heat Standard - Section 3395

We are concerned that the proposed changes to Section 3395 appear to implicitly lower the threshold for high-heat precautions for new employees.

Under present text, new employees must be observed for 14 days and, if high heat precautions are triggered (section (e), at a temperature of 95 degrees Fahrenheit), then the new worker must also be covered by high-heat procedures.

Under the proposed revisions to Section 3395, an employer would have to either: (1) apply high-heat procedures to any new employee or (2) apply a “phase-in” for new employees. Notably, both of these precautions apply even if the temperature does not reach high-heat levels. Functionally, this expands employers’ obligations towards new workers, even if the temperature remains at the bare threshold to trigger the regulation (82 degrees). Though we do not oppose alternative compliance methods such as the phase-in proposed in subsection (g)(3)(A)/(B), we do not believe it should apply when no high-heat conditions actually exist.

As a result, we would ask that section (g) be revised to require such actions only when high-heat conditions exist *and* a worker is new. This would continue to require observation of new employees, but would not treat 82 degrees like 95 degrees.

Importantly, AB 2243 did not compel any changes to this portion of Section 3395 (related to high-heat obligations for new employees). Instead, it only provided that “[t]he division shall consider developing regulations, or revising existing regulations, related to ... acclimatization to higher temperatures, especially

¹ We believe the proper time for such objections is when the Standards Board is considering the rulemaking package and has the discretion to approve or reject the proposal.

following an absence of a week or more from work in ultrahigh heat settings...” (Labor Code Section 6721(d).) We view our proposed language as consistent with this requirement.

Comments on the Proposed Revisions to the Indoor Heat Standard - Section 3396

We see the proposed changes to Section 3396 as similar, and similarly not required by AB 2243. Specifically, present law requires that new workers be observed closely for 14 days if the temperature exceeds 87 degrees Fahrenheit, or if it exceeds 82 degrees Fahrenheit and the worker wears clothing which restricts heat removal.

The proposed changes would require that new employees be treated as if the indoor heat regulation’s version of “high heat” protocols were in effect ((e)(2)/(3)) or utilize the new “phase-in” method. As noted above, we view this as a considerable expansion of the obligations towards new workers—and do not see the need for its inclusion in AB 2243.

Comments on the Proposed Revisions’ “Phase-in” Approach

Both proposals (Sections 3395 & 3396) create a new “phase-in” approach for new employees, wherein the employees work only fractions of their first few days. We have some basic questions about pay and labor law issues here. For example: would the employer be required to pay the new employee as if they had worked a full day? If so, out of the first five days of work paid for, the employer would pay for five days work, but receive three days actual work.

This is also particularly important for industries where time is of the essence. For example: in agriculture, harvest seasons move quickly. As soon as it is ripe (and before it spoils) a crop must be harvested. With a period of days to harvest a full crop, employers may struggle to respond to sudden weather changes (which may ruin crops) or sudden absences of expected workers because any urgent short-term replacements will be functionally difficult to use.

We also have simple clarity concerns as to how this “phase-in” approach would apply if the temperature were to change within the “phase-in” period. For example, 82 degrees on the first day of hire (triggering the new “acclimatization” protocols in either regulation), but then the temperature falls to a high of 78 degrees on day two—is the phase-in approach still required? Presumably not, as the entire regulation is no longer in effect. What if day 3 then rises again to 83 degrees? In such a situation, is the employer compelled to return to a five-day cycle? Or can an employer consider themselves on day 3 of a five-day phase-in process? These questions need to be answered for employers to feasibly use this alternative option for acclimatization.

We would suggest that any proposed solution be easily applicable and understandable, and also not punish employers who may need to quickly incorporate workers into their workplace due to unexpected absences or condition changes.

Comments on the Proposed Revisions’ “EXCEPTION” Regarding Prior Recent Heat Exposure

In both proposed revisions, the same “EXCEPTION” is included, which provides that an employer does not need to comply with either of the “new worker” options (high heat or phase-in procedures) if the employer can demonstrate that the employee “consistently” worked under the same or similar conditions within the last 14 days. Though we agree with and support the concept of the exception, we have multiple concerns with the specific text.

First, at a functional level, we are not sure how an employer would theoretically be able to demonstrate such past working conditions. We imagine such proof would require: (a) a worker who carries with them some signed form or pay stub of prior employment at all times; (b) some verifiable record of the temperature at the specific location which the worker previously worked ... neither of which is likely to be in the new employer’s possession.

Second, it is unclear what “consistently” means in this context. Would three days of consecutive work be “consistently” working? What if those three days immediately preceded the present work? At present, it is unclear.

Third, we are confused as to why this exception is written to only apply to the “phase-in” option for new employees. When read closely, it is an exception to the requirements of (g)(3)(A) & (B), which lay out how a new or returning worker may be “phased in” to a new workplace. However, if a worker is demonstrated to already be accustomed to the environment, then there is no need to treat them differently than other workers—and they should also not be treated as new workers under (g)(3), which requires either compliance with section (e) or (g). In other words: the exception should be reworded to apply to all of subsection (g)(3), and not (g)(3)(A)/(B) specifically.

Conclusion:

We appreciate the opportunity to provide comment and look forward to participating in the advisory committee process on this important regulation.

Sincerely,



Robert Moutrie
Senior Policy Advocate
California Chamber of Commerce
on behalf of

Associated General Contractors of California, Tresten Keys
California Agricultural Aircraft Association, Terry Gage
California Alliance of Family-Owned Businesses, Bret Gladfely
California Association of Sheet Metal and Air Conditioning Contractors National Association, Emily Mills
California Association of Winegrape Growers, Michael Miller
California Attractions and Parks Association, Sabrina Demayo Lockhart
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California Farm Bureau, Bryan Little
California Farm Labor Contractor Association, Kimberly Clark
California Framing Contractors Association, Kevin Bland
California League of Food Producers, Benjamin Ebbink
California Restaurant Association, Matt Sutton
California Retailers Association, Ryan Allain
Construction Employers’ Association, Scott Govenar
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Northern California Allied Trades (NCAT), Jeannie P. Simpelo
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