

July 7, 2025

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Submitted via email: eberg@dir.ca.gov; jlandaverde@dir.ca.gov

RE: Proposed Amendments §3395 & §3396 - Written Comments

Dear Deputy Chief Berg,

Please accept the following comments from the OSH Proterie on the California Division of Occupational Safety and Health's (CalOSHA or Division) [proposed draft language](#)¹ for heat illness prevention, sections §3396 Heat Illness Prevention in Indoor Places of Employment (Indoor Heat) and §3395 Heat Illness Prevention in Outdoor Places of Employment (Outdoor Heat).

The [OSH Proterie](#) is a network and platform for Occupational Safety and Health (OSH) compliance leaders from various industries. Our members are directly responsible for workplace environmental safety and health, and we provide their collective voice to OSH agencies to improve safety, compliance, and operational effectiveness.

General Comments

The Division's proposed amendments fundamentally exceed California Assembly Bill 2243 (AB 2243)² scope and contradict the Board's explicit decision to reject additional acclimatization requirements during the 2023 Indoor Heat rulemaking and subsequent adoption in 2024. We are concerned this proposal wastes resources and undermines the collaborative process that shaped California's comprehensive heat illness prevention standards.

AB 2243's Limited Mandate

AB 2243 requires the Division to propose and present to the Board by December 1, 2025, **two specific changes** to the *Outdoor Heat* standard:

¹ CalOSHA's "AB 2243 draft language for heat illness prevention, sections 3395 and 3396:

<https://www.dir.ca.gov/dosh/doshreg/heat-illness/Heat-Illness-Draft-Text.docx>

² AB 2243 (2022): https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2243

1. Distribution of Heat Illness Prevention Plans (HIPPs) to new employees
2. Distribution of HIPPs annually

The Labor Code explicitly requires the Division to "**consider**" additional acclimatization protections for "**ultrahigh heat settings**" - not mandate new requirements at the initial temperature triggers, 80°F/82°F. Despite this, the Division proposes amendments to both standards at initial temperature triggers.

Proposed (g)(3)(A) and (B) are not only out of scope of the original legislation, the Division's messaging on why these changes are necessary, including the Division's statement³ explaining the changes, is inaccurate and misleading -- **The Labor Code does not require implementation of new subsections for acclimatization to initial heat triggers.**

The Board Already Rejected These Proposals

Most critically, the Board explicitly rejected acclimatization schedules for new and returning employees at initial temperature triggers after thorough stakeholder input during the Indoor Heat rulemaking. The regulatory timeline illustrates the Division and Board had the opportunity to include these requirements after AB 2243's September 2022 passage but deliberately chose not to prior and during the rulemaking process.

Relitigating this settled decision wastes stakeholder resources and contradicts documented Board reasoning. The Board specifically declined to adopt acclimatization schedules, stating the preference to allow "employers the necessary flexibility to address the unique circumstances of their respective industries and worksites."

Current Standards Already Provide Comprehensive Protection

The Division's justification ignores that **existing regulations already protect all employees during ultrahigh heat conditions:**

- §3395(g)(1) and §3396(g)(1) protect all employees, including returning workers, during heat waves (e.g., ultrahigh heat settings).
- §3395(e) and §3396(e) require additional protections at higher temperatures
- California's Outdoor Heat standard has protected workers for over 20 years
- The Indoor Heat standard represents years of collaborative development since 2017

³ The Division's explanation, highlighted in yellow on the draft language document, states: "new subsections (g)(3)(A) and (g)(3)(B) will implement Labor Code section 6721"

AB 2243 History and Timeline

AB 2243 was signed into law in September 2022. The Board tracked this legislation following its February 2022⁴ introduction through its final enrollment⁵, providing seven months advance notice. When the Indoor Heat rulemaking was noticed in March 2023 - six months after AB 2243's passage - the Division and Board had complete knowledge of the legislation's mandates and ample opportunity to incorporate additional acclimatization requirements.

The Division and Board made a deliberate, informed decision not to include these provisions. This was not an oversight - stakeholders specifically requested acclimatization requirements for returning employees and reduced work schedules at initial temperature triggers. The Board **explicitly considered and rejected** these exact proposals, documenting the reasoning in the Indoor Heat Rulemaking's Final Statement of Reasons (see excerpts below).

The timeline proves intentional exclusion, not inadvertent omission:

- February 2022: AB 2243 introduced, Board begins tracking in March 2022
- September 2022: AB 2243 signed into law
- March 2023: Indoor Heat rulemaking noticed; Final Statement of Reasons rejects recommendations to include additional acclimatization protocols
- May 2024: Indoor Heat standard adopted without the provisions now being proposed

If CalOSHA and the Board believed them necessary and mandated, the Division and Board had over a year and a half (20 months) between AB 2243's passage and the Indoor Heat standard's adoption to include these requirements. The decision not to include them represents a considered regulatory judgment that the Division is now proposing to overturn.

Final Statement of Reasons: Indoor Heat

The Board's [Final Statement of Reasons \(FSOR\)](#) for the Indoor Heat standard documents **why these provisions were considered and rejected** after AB 2243 became law. The following stakeholder comments⁶ from the Indoor Heat rulemaking **directly mirror what the Division now proposes**, followed by the Board's definitive rejection:

- Comment 9.4: "The commenter is concerned about workers who may lose their adaptation to heat if they are absent for a week or more. The commenter states that subsection (g)(1) applies

⁴ OSHSB March 2022 Board Meeting Packet included the first briefing on AB 2243 to the Board in its Legislative Update, p. 94: <https://www.dir.ca.gov/oshsb/documents/meetingpacketMar2022.pdf>

⁵ OSHSB October 2022, Board Meeting Packet included actions by the California legislature and Governor in the Legislative Update, p. 173: <https://www.dir.ca.gov/oshsb/documents/meetingpacketOct2022.pdf>

⁶ The FSOR includes the Board's reasoning and response to commenters who requested additional acclimatization protocols: <https://www.dir.ca.gov/oshsb/documents/Indoor-Heat-FSOR.pdf>

to all workers during a heat wave while subsection (g)(2) applies only to “an employee who has been newly assigned” to work in conditions that would expose them to heat stress. The commenter references the NIOSH sample schedule for acclimatization that includes models for both newly assigned workers and those returning to work after an absence. The commenter recommends that the proposed rules clearly state that acclimatization strategies are appropriate for both new workers and those returning to work after an absence.”

- Comment 9.7 also requested inclusion of acclimatization schedules and Comment 24.5 recommended the Board consider three key changes:
 - “In subsection (b)(1), include a more explicit statement about how acclimatization is lost over time without regular exposure to heat. Significant losses of acclimatization occur within a week and most benefits are lost in about three weeks.
 - Mandate employers to go beyond “close observation” in subsection (g). Acclimatization schedules recommended by the NIOSH, the U.S. Military, and others require a phased approach to heat exposure, not just a watchful eye.
 - Require modified acclimatization protocols to apply to employees returning after an extended absence (e.g., two weeks), not just those who are newly assigned to specific work areas.”
- Comment 29.5 recommended the “addition of language to provide best practices for acclimatizing workers by following an acclimatization program (such as those provided by NIOSH) reducing physical workload or work intensity during the acclimatization period, and maintaining close observation of employees by supervisors or designees.” Comment 39.2 asked for clarification of acclimatization including instructions for employers on how to implement, including adding an acclimatization schedule.
- Finally, former Board member Barbara Burgel also requested acclimatization schedules (Comment 77.1)

The Board's response to comments 9.4, 9.7, 24.5, 29.5, 39.2, and 77.1 - which requested acclimatization schedules and protocols for returning employees that the Division now proposes - was unequivocal:

“The Board is not persuaded by the commenter’s arguments and declines to make the proposed modifications. To avoid any confusion or conflicts between regulations, the definition of “acclimatization” remains the same as the existing definition in section 3395. In order to remain consistent with section 3395, the Board declines to adopt the proposed modification. The Board notes that acclimatization may be one of the most important elements of a HIPP. **The detailed account of acclimatization is required in the training and written procedures. This approach**

allows employers the necessary flexibility to address the unique circumstances of their respective industries and worksites.” [emphasis added]

In addition, the Board responded to Comment 29.5, expressing additional support for detailed acclimatization plans to be in guidance documents:

“The Board is not persuaded by the commenter’s arguments and declines to modify the proposed regulation as best practices can be described in guidance documents rather than within regulations...”

Notably, the Board's FSOR makes no mention of AB 2243 creating any future obligation to expand acclimatization requirements or reopen the rulemaking. Despite having full knowledge of AB 2243’s passage and explicit stakeholder requests for the exact provisions the Division now proposes, the Board and Division shared no reason or plan to include them later.

The Division and Board have already fulfilled AB 2243's requirements -- The Board considered additional acclimatization provisions through the stakeholder process, evaluated necessity against existing protections, and made an informed decision to reject them. This constitutes full compliance with AB 2243’s directive to "consider" such measures.

The Division's current proposal essentially argues the Board was wrong and must now reverse its documented decision – this is a regulatory about-face, and we are concerned that AB 2243 is false justification to re-open established rulemakings to create additional compliance obligations the Division prefers.

Misalignment with Federal OSHA’s Proposed Heat Illness Prevention Standard

Federal OSHA's proposed draft and CalOSHA's current standards are fundamentally different and do not directly compare. This distinction is critical because the Division's approach—taking one element from Federal OSHA's proposal (reduced work schedules) and layering it onto CalOSHA's existing acclimatization requirements—fails to consider how other protective elements in California's standards already prevent heat illness. For example, Federal OSHA does not propose observation during heat waves, nor does it require ANY specific control measures to reduce temperatures below high-heat triggers. These are two prescriptive elements in CalOSHA's Indoor Heat rule that comprehensively protects new and returning employees.

The Division incorrectly states⁷ that the new provisions in (g)(3) for Indoor Heat align with Federal OSHA's proposed alternative to reduced work schedules. This characterization is fundamentally inaccurate and misleading. Federal OSHA's proposal allows employers to implement high-heat

⁷ The Division explanation is highlighted in yellow on the §3396 draft language document.

procedures⁸—rest breaks, observation, and hazard alert briefings—instead of reduced work schedules. These procedures directly parallel California's Outdoor Heat high-heat requirements in §3395(e). However, CalOSHA's Indoor Heat proposal requires employers to follow §3396(e)(2)(B) (administrative controls) *and* (C) (personal heat-protective equipment) as an alternative to reduced schedules.

The Critical Difference: Hierarchy of Controls

Current Indoor Heat regulations follow a hierarchy of controls: when engineering controls cannot reduce indoor temperature below the high-heat triggers, 82°F/87°F, employers must implement administrative controls; when administrative controls cannot be implemented, employers must provide PPE. Under this system, PPE is required only when both engineering controls AND administrative controls have proven insufficient or infeasible. The proposed alternative abandons this hierarchy entirely, requiring employers to implement all three control measures simultaneously: engineering controls to lower temperature, administrative controls, *and* PPE—regardless of whether the first two measures are effective. Moreover, all three control measures will need to be implemented, just for new and returning employees, at the initial temperature trigger of 82°F.

Consider a warehouse operation during summer months where indoor temperatures reach 87°F. Under current regulations, if the employer successfully reduces the temperature to 82°F through improved ventilation (engineering controls), no additional control measures are required. However, under the proposed alternative for new and returning employees, the employer would still be required to implement administrative controls (such as modified work schedules or additional rest breaks) AND provide personal heat-protective equipment (cooling vests, specialized clothing) for select employees for five days—even though the engineering controls have essentially eliminated the risk. This is on top of providing water, cool-down areas, observed rest breaks, training, and emergency response procedures.

This approach is not only vastly different from Federal OSHA's proposal, but also creates unnecessary complexity, overlap and expense. The proposed requirement would mandate PPE at 82°F for all new and returning indoor employees—a completely unprecedented requirement that neither Federal OSHA nor California's Outdoor Heat standard imposes. Additionally, this five-day requirement operates separately from the existing 14-day observation period for new employees exposed to higher temperatures, and observation of all employees during heatwaves, creating overlapping and confusing obligations that will be difficult for employers to track and implement effectively. The result is a regulatory framework that is overly protective for lower temperature exposures, administratively burdensome, and fundamentally different from both the federal proposal it claims to mirror and CalOSHA's Outdoor Heat standards.

⁸ §1910.148(f) of the Draft of Federal OSHA's heat proposal, provided by CalOSHA:
https://www.dir.ca.gov/dosh/doshreg/heat-illness/Draft-federal-OSHA-heat-proposal_08-30-2024.docx

Effectiveness of Current CalOSHA Standards

CalOSHA's Indoor and Outdoor Heat standards are comprehensive and robust; the rules protect new and returning workers from higher and ultrahigh-heat conditions and additional acclimatization protocols at the initial temperature triggers of 82°F and 80°F are not necessary. For example,

- The required controls to reduce or mitigate the risk of heat illness in §3396 (e)(2) already protect new and returning employees at the higher temperature trigger of 87°F.
- The Division has already defined “high-heat” as 95°F in the Outdoor Heat standard which triggers additional high-heat protections. These apply to new and returning employees and include effective measures appropriate for outdoor scenarios (e.g., communication, observation, pre-shift briefings).
- Both standards require observation during heat waves (e.g., ultrahigh heat conditions). This is effective in protecting new and returning employees to higher temperatures.
- Both standards require monitoring and first aid/emergency response, at initial temperature triggers (80/82°F) of all employees, during cool-down rest periods.
- Acclimatization is trained and outlined in the HIIP.
- Finally, the scope of Indoor Heat includes all employees working in temperatures above 95°F (e.g., ultrahigh heat) for more than 15 minutes in a 60-minute period.

Impact on Workers, Administrative Burden and Cost

The proposal creates administrative complexity, financial liability, and potential safety gaps that need to be considered and evaluated.

Reducing returning employee's hours to comply with the standards may create financial hardship for workers who depend on consistent income and could appear to be retaliatory. Employees returning from taking time off could face reduced paychecks - essentially being penalized for taking vacation or sick days. This financial strain could force workers to choose between taking necessary time off and maintaining their income, creating additional stress and potentially discouraging proper rest and recovery.

The proposal would require many employers to hire additional supervisory staff to track, manage, and individually monitor every returning employee. This is true for both compliance options (e.g., reduced schedules and implementation of high-heat procedures). This would require:

- Real-time tracking of vacation dates and return schedules, in the field
- Individualized work schedule modifications
- Complex recordkeeping systems

Unlike standard HR return-to-work processes, this requires **continuous, personalized monitoring** - a massive operational change with substantial costs that must be included in any economic assessment. Complex individualized tracking also runs the risk of creating confusion and inconsistency in how employees are managed. Workers may face:

- Unpredictable schedule changes when they return to work
- Different treatment depending on when they return from time off
- Confusion about which requirements apply

Most critically, **reduced work schedules may actually endanger employees**. Simply cutting hours does not address the environmental and personal risk factors that cause heat illness. Workers on reduced schedules can still experience heat-related illness but may feel a false sense of security – this is on top of less income and potentially less oversight.

Recommendation

We recommend **deleting all proposed language in §3395 and §3396(g)(3)** as the new elements create unnecessary complexity and burden in two standards that effectively protect workers at higher and ultrahigh heat conditions.

However, we **support maintaining the proposed change in §3395(g)(2)** - including the specific 95°F high-heat trigger supports AB 2243's intent and provides clarity in Outdoor Heat.

We also **support the proposed change in subsection (i)** requiring distribution of HIPPs. This requirement not only aligns with AB 2243's mandate but ensures employees and employers receive regular reminders about critical heat safety procedures, ultimately preventing heat-related illness, injury, and fatalities.

Closing

The Division was not tasked with creating additional acclimatization procedures at initial temperature triggers. AB 2243 explicitly addresses **ultrahigh heat conditions**—not low exposures at 80°F or 82°F. The agency's assertion that the bill compels this action misrepresents legislative intent and the history of the Indoor Heat rulemaking.

The proposed approach appears designed to compel employers toward high-heat protections at initial temperature triggers by making the alternative—reduced work schedules—so administratively burdensome that compliance becomes impractical. This regulatory strategy misallocates resources and abandons risk-based decision-making.

Finally, reopening these standards now undermines years of collaborative development and diverts critical resources from other essential rulemakings. Both standards are already comprehensive and effective.

If however, the Division believes current protections are insufficient, it must **provide clear data and evidence** demonstrating this need. California employers have already invested significantly in comprehensive heat illness prevention programs. Adding unnecessary complexity at this stage creates confusion and potentially undermines existing protections.

We urge the Division to:

- Align with AB 2243's intent and scope
- Focus resources on other essential regulations in queue
- Avoid expanding regulatory burdens without demonstrated need

We look forward to continuing dialogue at the advisory meeting and remain available for questions.

Sincerely,



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