

Attachment – draft regulatory text

Note: changes from section 3396 are shown in strikethrough and underline

§33967. Heat Illness Prevention in Indoor ~~Places of Employment~~ Correctional and Detention Facilities.

(a) Scope and Application.

(1) This section applies to all indoor work areas where the temperature equals or exceeds ~~82~~ 87 degrees Fahrenheit when employees are present in the following facilities:-

(A) “Prisons, as defined by section 6082 of the Penal Code, operated by the California Department of Corrections and Rehabilitation.

(B) “Local detention facilities” as defined by Section 6031.4 of the Penal Code that are operated by a local government.

(C) “Juvenile facilities” as defined by Section 850 of the Welfare and Institutions Code and subdivision (g) of Section 875 of the Welfare and Institutions Code that are operated by a local government.

EXCEPTIONS:

~~(A) For indoor work areas not subject to any of the conditions listed in subsection (a)(2), the employer is not required to comply with subsections (d)(2) or (e).~~

~~(B)~~ (A) This section does not apply to places of employment where employees are teleworking from a location of the employee's choice, which is not under the control of the employer.

~~(C)~~ (B) This section does not apply to incidental heat exposures where an employee is exposed to temperatures ~~at or above 82 degrees Fahrenheit and~~ below 95 degrees Fahrenheit for less than 15 minutes in any 60-minute period. This exception does not apply to the following:

1. Vehicles without effective and functioning air conditioning; or
2. Shipping or intermodal containers during loading, unloading, or related work.

~~(D)~~ (C) This section does not apply to emergency operations directly involved in the protection of life or property.

~~(E) The following employers and places of employment are exempt from this section:~~

- ~~1. Prisons, as defined by section 6082 of the Penal Code, operated by the California Department of Corrections and Rehabilitation.~~
- ~~2. "Local detention facilities" as defined by Section 6031.4 of the Penal Code that are operated by a local government.~~
- ~~3. "Juvenile facilities" as defined by Section 850 of the Welfare and Institutions Code and subdivision (g) of Section 875 of the Welfare and Institutions Code that are operated by a local government.~~

~~(2) Conditions under which an indoor work area is subject to all provisions of this section, including subsections (d)(2) and (e):~~

~~(A) The temperature equals or exceeds 87 degrees Fahrenheit when employees are present; or~~

~~(B) The heat index equals or exceeds 87 degrees Fahrenheit when employees are present; or~~

~~(C) Employees wear clothing that restricts heat removal and the temperature equals or exceeds ~~82~~ 87 degrees Fahrenheit; or~~

~~(D) Employees work in a high radiant heat area and the temperature equals or exceeds ~~82~~ 87 degrees Fahrenheit.~~

(3) This section applies in any other setting identified in writing by the Division of Occupational Safety and Health (the Division) through the issuance of an Order to Take Special Action, in accordance with section 332.3.

(4) This section applies to the control of risk of occurrence of heat illness. This is not intended to exclude the application of other sections of title 8, including, but not necessarily limited to, sections 1512, 1524, 3203, 3363, 3395, 3400, 3439, 3457, 6251, 6512, 6969, 6975, 8420 and 8602(e).

NOTE NO. 1: The measures required here may be integrated into the employer's written Injury and Illness Prevention Program required by section 3203, the employer's written Heat Illness Prevention Plan required by subsection 3395(i), or maintained in a separate document.

NOTE NO. 2: This section is enforceable by the Division pursuant to Labor Code sections 6308 and 6317 and any other statutes conferring enforcement powers upon the

Division. It is a violation of Labor Code sections 6310, 6311, and 6312 to discharge or discriminate in any other manner against employees for exercising their rights under this or any other provision offering occupational safety and health protection to employees.

NOTE NO. 3: This section does not exempt state entities and departments from complying with State Administrative Manual section 1805.3.

(b) Definitions.

(1) "Acclimatization" means temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to it. Acclimatization peaks in most people within four to fourteen days of regular work for at least two hours per day in the heat.

(2) "Administrative control" means a method to limit exposure to a hazard by adjustment of work procedures, practices, or schedules. Examples of administrative controls that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to: acclimatizing employees, rotating employees, scheduling work earlier or later in the day, using work/rest schedules, reducing work intensity or speed, reducing work hours, changing required work clothing, and using relief workers.

~~(3) "Clothing that restricts heat removal" means full body clothing covering the arms, legs, and torso that is any of the following:~~

~~(A) Waterproof; or~~

~~(B) Designed to protect the wearer from a chemical, biological, physical, radiological, or fire hazard; or~~

~~(C) Designed to protect the wearer or the work process from contamination.~~

~~EXCEPTION to subsection (b)(3): "Clothing that restricts heat removal" does not include clothing demonstrated by the employer to be all of the following:~~

~~(A) Constructed only of knit or woven fibers, or otherwise an air and water vapor permeable material; and~~

~~(B) Worn in lieu of the employee's street clothing; and~~

~~(C) Worn without a full-body thermal, vapor, or moisture barrier.~~

- (4) “Cool-down area” means an indoor or outdoor area that is blocked from direct sunlight and shielded from other high radiant heat sources to the extent feasible and is either open to the air or provided with ventilation or cooling. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. A cool-down area does not include a location where:
- (A) Environmental risk factors defeat the purpose of allowing the body to cool; or
 - (B) Employees are exposed to unsafe or unhealthy conditions; or
 - (C) Employees are deterred or discouraged from accessing or using the cool-down area.
- (5) “Engineering control” means a method of control or a device that removes or reduces hazardous conditions or creates a barrier between the employee and the hazard. Examples of engineering controls that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to: isolation of hot processes, isolation of employees from sources of heat, air conditioning, cooling fans, cooling mist fans, evaporative coolers (also called swamp coolers), natural ventilation where the outdoor temperature ~~or heat index~~ is lower than the indoor temperature ~~or heat index~~, local exhaust ventilation, shielding from a radiant heat source, and insulation of hot surfaces.
- (6) “Environmental risk factors for heat illness” means working conditions that create the possibility that heat illness could occur, including: air temperature, air movement, relative humidity, radiant heat from the sun and other sources; conductive heat sources such as the ground, workload severity and duration, protective clothing, and personal protective equipment worn by employees.
- (7) “Globe temperature” means the temperature measured by a globe thermometer, which consists of a thermometer sensor in the center of a six-inch diameter hollow copper sphere painted on the outside with a matte black finish, or equivalent. The globe thermometer may not be shielded from direct exposure to radiant heat while the globe temperature is being measured.
- (8) “Heat illness” means a serious medical condition resulting from the body's inability to cope with a particular heat load, and includes: heat cramps, heat exhaustion, heat syncope, and heat stroke.
- ~~(9) “Heat index” means a measure of heat stress developed by the National Weather Service (NWS) for outdoor environments that takes into account the dry bulb temperature and the relative humidity. For purposes of this section, heat index refers to conditions in indoor work areas. Radiant heat is not included in the heat index. The required NWS heat index chart (2019) is in Appendix A to section 3396.~~

(10) "Heat wave" means any day in which the predicted high outdoor temperature for the day will be at least 80 degrees Fahrenheit and at least ten degrees Fahrenheit greater than the average high daily outdoor temperature for the preceding five days, for the purpose of this section only.

~~(11) "High radiant heat area" means a work area where the globe temperature is at least five degrees Fahrenheit greater than the temperature, as defined in subsection (b)(20).~~

~~(11)~~(12) "High radiant heat source" means any object, surface, or other source of radiant heat that, if not shielded, would raise the globe temperature of the cool-down area five degrees Fahrenheit or greater than the dry bulb temperature of the cool-down area.

~~(12)~~(13) "Indoor" refers to a space that is under a ceiling or overhead covering that restricts airflow and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed. All work areas that are not indoor are considered outdoor and covered by section 3395.

EXCEPTION: Indoor does not refer to a shaded area that meets the requirements of subsection 3395(d) and is used exclusively as a source of shade for employees covered by section 3395.

~~(13)~~(14) "Personal heat-protective equipment" means equipment worn to protect the user against heat illness. Examples of personal heat-protective equipment that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to: water-cooled garments, air-cooled garments, cooling vests, wetted over-garments, heat-reflective clothing, and supplied-air personal cooling systems.

~~(14)~~(15) "Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, alcohol consumption, caffeine consumption, and use of medications that affect the body's water retention or other physiological responses to heat.

~~(15)~~(16) "Preventative cool-down rest" means a rest taken in a cool-down area to prevent overheating.

~~(16)~~(17) "Radiant heat" means heat transmitted by electromagnetic waves and not transmitted by conduction or convection. Sources of radiant heat include the sun, hot objects, hot liquids, hot surfaces, and fire.

~~(17)(18)~~ “Relative humidity” means the amount of moisture in the air relative to the amount that would be present if the air were saturated.

~~(18)(19)~~ “Shielding” means a physical barrier between radiant heat sources and employees that reduces the transmission of radiant heat.

~~(19)(20)~~ “Temperature” means the dry bulb temperature in degrees Fahrenheit obtainable by using a thermometer freely exposed to the air without considering humidity or radiant heat, to measure the temperature in the immediate area where employees are located.

~~(20)(21)~~ “Union representative” means a recognized or certified collective bargaining agent representing the employees.

(c) Provision of Water. Employees shall have access to potable drinking water meeting the requirements of sections 1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working and in indoor cool-down areas required by subsection (d). Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent consumption of water, as described in subsection (h)(1)(C), shall be encouraged.

(d) Access to Cool-Down Areas.

(1) The employer shall have and maintain one or more cool-down areas at all times while employees are present. The cool-down area shall be at least large enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the cool-down areas without having to be in physical contact with each other. The cool-down area shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the size of the cool-down area during meal periods shall be at least large enough to accommodate the number of employees on the meal period who remain onsite. The temperature in indoor cool-down areas shall be maintained at less than 82 degrees Fahrenheit, unless the employer demonstrates it is infeasible.

(2) ~~This subsection applies to work areas subject to one or more of the conditions listed in subsection (a)(2).~~ Employers shall allow and encourage employees to take a preventative cool-down rest in a cool-down area when employees feel the need to do so to protect themselves from overheating, and such access to cool-down areas shall be permitted at all times. An individual employee who takes a preventative

cool-down rest:

- (A) Shall be monitored and asked if they are experiencing symptoms of heat illness;
- (B) Shall be encouraged to remain in the cool-down area; and
- (C) Shall not be ordered back to work until any signs or symptoms of heat illness have abated, and in no event less than five minutes in addition to the time needed to access the cool-down area.

Exception to subsection (d)(2): Where the employer can demonstrate that allowing an employee to take a preventative cool-down rest in a cool-down area would imperil safety or security or disrupt services or programming for the incarcerated, and a relief employee cannot be provided without imperiling safety or security or disrupting services or programming for the incarcerated, the employer shall implement the following until a relief employee can be provided or the rest can be taken, whichever occurs first, without imperiling safety or security or disrupting services or programming for the incarcerated:

- (A) Maintain an effective system of communication to monitor the employee and ask if they are experiencing symptoms of heat illness;
- (B) Comply with emergency response requirements in subsection (f)(2) if an employee experiences symptoms of heat illness;
- (C) Reduce the employee's required exertion levels to the greatest extent feasible;
- (D) Ensure the employee possesses a container of water that meets the requirements of subsection (c); and
- (E) Provide the employee with personal heat-protective equipment or a cooling towel that is always wet.

- (3) 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 subsection (f). For purposes of this section, preventative cool-down rest period has the same meaning as "recovery period" in Labor Code subsection 226.7(a).

(e) ~~Assessment and Control Measures. This subsection only applies to work areas subject to one or more of the conditions listed in subsection (a)(2).~~

- (1) As specified in subsections (e)(1)(A) through (e)(1)(D), the employer shall measure and record the temperature ~~and heat index, and record whichever is greater~~. The employer shall also identify and evaluate all other environmental risk factors for heat illness.

- (A) The employer shall establish and maintain accurate records of ~~either the~~

temperature or heat index measurements, whichever value is greater, as required by subsection (e)(1). The records shall include the date, time, and specific location of all measurements.

(B) ~~Temperature and heat index~~ measurements, as required by subsection (e)(1), shall be taken as follows:

1. Initial measurements shall be taken ~~when it is reasonable to suspect that subsection (e) applies~~ where employees work and at times during the work shift when employee exposures are expected to be the greatest.
2. Measurements shall be taken again when they are reasonably expected to be 10 degrees or more above the previous measurements where employees work and at times during the work shift when employee exposures are expected to be the greatest.
3. Records, as required by subsection (e)(1)(A), shall be retained for 12 months or until the next measurements are taken, whichever is later. The records shall be made available to employees, designated representatives as defined in section 3204, and representatives of the Division at the worksite and upon request.

(C) Instruments used to measure the ~~temperature or heat index~~ shall be used and maintained according to the manufacturers' recommendations. ~~Instruments used to measure the heat index shall provide the same results as those in the NWS heat index chart in Appendix A.~~

(D) The employer shall have effective procedures to obtain the active involvement of employees and their union representatives in the following:

1. Planning, conducting, and recording the temperature measurements ~~of temperature or heat index, whichever is greater~~, as required by subsection (e)(1).
2. Identifying and evaluating all other environmental risk factors for heat illness.

EXCEPTIONS to subsection (e)(1):

~~(A) In lieu of complying with subsection (e)(1), an employer may assume a work area is subject to one or more of the conditions listed in subsection (a)(2). Such employers shall comply with subsection (e)(2).~~

~~(B)~~ Vehicles with effective and functioning air conditioning.

(2) The employer shall use control measures as specified in subsections (e)(2)(A) through (e)(2)(C) to minimize the risk of heat illness. The selection of control measures shall be based on the environmental risk factors for heat illness present in the work area.

(A) Engineering controls. Engineering controls shall be used to reduce and maintain ~~both the temperature and heat index to below 87 degrees Fahrenheit when employees are present, or to reduce the temperature to below 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat areas,~~ except to the extent that the employer demonstrates such controls would imperil safety or security or otherwise be ~~are~~ infeasible. When such controls are infeasible to meet the temperature ~~and heat index~~ thresholds, the employer shall:

1. Use engineering controls to reduce the temperature, ~~heat index, or both, whichever applies,~~ to the lowest feasible level, except to the extent that the employer demonstrates such controls are infeasible; and
2. Use engineering controls to otherwise minimize the risk of heat illness, except to the extent that the employer demonstrates such controls are infeasible.

(B) Administrative controls. Where feasible engineering controls are not sufficient to reduce and maintain the temperature ~~and heat index to below 87 degrees Fahrenheit when employees are present or the temperature to below 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat areas,~~ administrative controls shall be used to minimize the risk of heat illness, except to the extent that the employer demonstrates such controls would imperil safety or security or otherwise be ~~are~~ infeasible.

(C) Personal heat-protective equipment. Where feasible engineering controls are not sufficient to reduce and maintain the temperature ~~and heat index to below 87 degrees Fahrenheit when employees are present or the temperature to below 82 degrees Fahrenheit where employees wear clothing that restricts heat removal or work in high radiant heat areas~~ and feasible administrative controls do not minimize the risk of heat illness, personal heat-protective equipment shall be used to minimize the risk of heat illness, except to the extent that the employer demonstrates that use of such equipment would imperil safety or security or otherwise be ~~is~~ infeasible.

(f) Emergency Response Procedures. The employer shall implement effective emergency response procedures including:

(1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the worksite 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.

(2) 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.

(A) 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.

(B) 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.

(C) 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 emergency response procedures including contacting emergency medical services.

(3) Contacting emergency medical services and, if necessary, transporting employees to a place where they can be reached by an emergency responder.

(4) Ensuring that, in the event of an emergency, clear and precise directions to the worksite can and will be provided as needed to emergency responders.

(g) Acclimatization.

(1) Where no effective engineering controls are in use to control the effect of outdoor heat on indoor temperature, all employees shall be closely observed by a supervisor or designee during a heat wave.

(2) An employee who has been newly assigned to any of the following shall be closely observed by a supervisor or designee for the first 14 days of employment:

~~(A) In a work area where the temperature or heat index, whichever is greater, equals or exceeds 87 degrees Fahrenheit; or~~

~~(B) In a work area where the temperature equals or exceeds 82 degrees Fahrenheit for employees who wear clothing that restricts heat removal; or~~

~~(C) In a high radiant heat area where the temperature equals or exceeds 82 degrees Fahrenheit.~~

(h) Training.

(1) Employee training. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins work that should reasonably be anticipated to result in exposure to the risk of heat illness:

(A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.

(B) The employer's procedures for complying with the requirements of this section, including, but not limited to, the employer's responsibility to provide water, cool-down areas, cool-down rests, control measures, and access to first aid as well as the employees' right to exercise their rights under this section without retaliation.

(C) The importance of frequent consumption of small quantities of water, up to four cups per hour, when the work environment is hot and employees are likely to be sweating more than usual in the performance of their duties.

(D) The concept, importance, and methods of acclimatization pursuant to the employer's procedures under subsection (i)(5).

(E) The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and/or emergency responses to the different types of heat illness, and in addition, that heat illness may progress quickly from mild symptoms and signs to serious and life-threatening illness.

(F) The importance of employees immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers.

(G) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

(H) The employer's procedures for contacting emergency medical services, and if

necessary, for transporting employees to a point where they can be reached by an emergency responder.

(l) The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the worksite can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

(2) Supervisor training. Prior to supervising employees performing work that should reasonably be anticipated to result in exposure to the risk of heat illness, effective training on the following topics shall be provided to the supervisor:

(A) The information required to be provided by subsection (h)(1).

(B) The procedures the supervisor is to follow to implement the applicable provisions in this section.

(C) The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures.

(D) Where the work area is affected by outdoor temperatures, how to monitor weather reports and how to respond to hot weather advisories.

NOTE: Where employees are covered by section 3395 and this section, the training program for this section can be integrated into section 3395 training.

(i) Heat Illness Prevention Plan. The employer shall establish, implement, and maintain an effective Heat Illness Prevention Plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan may be included as part of the employer's Injury and Illness Prevention Program required by section 3203 or Heat Illness Prevention Plan required by section 3395 and shall, at a minimum, contain:

(1) Procedures for the provision of water in accordance with subsection (c).

(2) Procedures for access to cool-down areas in accordance with subsection (d).

(3) Procedures, in accordance with subsection (e), to measure and record the temperature and ~~heat index, and record whichever is greater~~; identify and evaluate all other environmental risk factors for heat illness; and implement control measures.

(4) Emergency response procedures in accordance with subsection (f).

(5) Procedures for acclimatization in accordance with subsection (g).

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3, 144.6, and 6720, Labor Code.