

OSHA Getting Hot, Hot, Hot!

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OSHA recently issued its first-ever national emphasis program (NEP) targeting heat illnesses and injuries. The agency is also in the process of implementing a new heat-stress standard, but that is not expected to be in place until at least 2023. For now, OSHA will use the NEP for inspections and citations under the General Duty Clause of the OSH Act, Section 5(a)(1), which requires employers to maintain a workplace free from recognized hazards and use feasible means of abatement.

The NEP directs OSHA's Area Offices and Compliance Safety and Health Officers (CSHOs) to double their number of heat-related inspections. They will do that by programmed inspections that target the transportation construction industry (among many others) for inspections during NWS heat alerts and warnings. But, they will also add heat-related components to all non-programmed inspections when the heat index is above 80. (Yes, you read that right!) The heat index is based on specious scientific evidence (as an independent federal safety review judge recently held), but OSHA nonetheless continues to use the index which combines air temperature and humidity.

This means that in practically every OSHA inspection in our industry in Florida - even if it is for something unrelated (e.g, fall protection, trenching, or work zone safety issues) - the CSHO will also conduct a heat-related inspection. And that has begun. In two recently fatality cases I'm handling, neither fatality was related to heat, but the CSHOs expanded the scope to include heat as they had been instructed to do by the NEP.

For heat inspections, and among other things, OSHA will determine whether the employer has a heat illness and injury program, including whether:

- The employer has a written program;
- The employer monitors temperature and worker exertion;
- There is unlimited cool water easily accessible to workers;
- There are required hydration breaks for hydration;
- There are scheduled rest breaks;
- Workers have access to a shaded area;
- New and returning workers are provided time for acclimatization;
- A "buddy" system is in place on hot days;
- Work is scheduled to avoid hot parts of the day;
- Job rotation is used to limit heat exposures; and
- Employees are trained in the importance of hydration, heat illness signs, first aid and summoning of emergency personnel.

The NEP does not mandate compliance with its "requirements" in the same way an employer must follow an OSHA standard. But, it does provide an important menu of options for an employer to consider for addressing heat as a workplace hazard. Employers that do nothing are

putting employees in harm's way. But those that do some things, but perhaps not everything in the NEP, can likely avoid or minimize an OSHA citation – and keep workers safe!

The FTBA Safety Committee is working on materials and resources that will help employers in the industry develop, update, and implement their plans. Check the Safety Committee web page regularly for updates.