

Workplace Safety and Summer Heat

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Summer temperatures can create hazards for workers, and employers can be liable for not addressing conditions that could lead to injuries and illnesses, such as heat exhaustion and heat stroke. Liability can arise whether work is being done outside in construction, landscaping, and agriculture, or inside in non-air conditioned manufacturing plants and warehouses.

Legal Requirements

Not protecting employees working in hot environments can result in worker complaints to the Occupational Safety and Health Administration (OSHA) or, in states running their own safety plans under agreements with OSHA—like North and South Carolina—to state OSHA agencies. It can also lead to follow-up inspections, citations, and fines.

OSHA does not have a specific standard on heat illness prevention. However, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, known as the General Duty Clause, requires employers to provide a workplace that is “free from recognized hazards ... likely to cause death or serious harm to employees.” That includes protecting employees from serious heat-related injuries.

Of the “state-plan” states, California, Minnesota, and Washington have heat-related hazard prevention standards. Other states that administer their own safety and health programs have general duty clauses in their statutes that can be used to address heat exposure at work. At both the federal and state levels, legislators and advocacy groups are pushing to develop specific heat stress standards.

Also, failing to provide adequate heat-related training and personal protective equipment can be considered violations of specific OSHA standards.

Beyond OSHA actions, heat-related injuries can also lead to worker's compensation claims, and exposing employees to dangerously hot conditions can result in criminal prosecution.

Recent OSHRC Decision

Recently OSHA lost a case in which it had cited an employer under the General Duty Clause for exposing employees "to the hazard of excessive heat from working on a commercial roof in the direct sun." An administrative law judge affirmed the citation, but on February 28, 2019, the Occupational Safety and Health Review Commission (OSHRC) reversed that decision by a 2-1 vote.

The backdrop for the case, *Secretary of Labor v. A.H. Sturgill Roofing, Inc.*, was the death of a temporary employee after he suffered a heat stroke on his first day on the job. The worker was a 60-year-old man who, unbeknownst to the employer, had multiple preexisting medical conditions. The work being done consisted of removing a building's roof so a new one could be installed. At the hottest part of the day, the heat index was 85°F.

The OSHRC ruled that OSHA did not present enough evidence to meet some of the requirements for a General Duty Clause violation. But the case may have gone against the employer if the company had known about the employee's preexisting conditions; if the heat index had been higher; or if other employees had gotten sick. Many observers see the *Sturgill* decision as providing a road map for OSHA to follow in presenting evidence the next time it has a heat exposure case based on the General Duty Clause.

Strategies for Employers

To reduce the risks of potential liability associated with employing workers in hot conditions, businesses may consider adopting a heat illness prevention plan that incorporates precautions like these:

- Encouraging employees to wear loose fitting and light-colored clothing
- Encouraging employees who work outside to wear a hat and sunscreen
- Requiring rest breaks at regular intervals
- Encouraging employees to drink cold water at regular intervals
- Giving new employees less strenuous tasks as they get acclimated to working in the heat
- Training employees on the dangers of heat illness and on how to respond to a heat-related emergency

Not considering prevention strategies like these can put workers at risk and can lead to legal issues for businesses.

If you have questions about the application of OSHA regulations or how to address heat hazards in the workplace, contact the Nexsen Pruet Employment and Labor Law Group.

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