

News You Can Use



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Cal/OSHA Rule-Making

Indoor Heat Illness Prevention Standard on Tap



CAL/OSHA HAS proposed its long-awaited indoor heat illness prevention standard as increasingly hot summers are affecting workers in indoor spaces like warehouses, production operations, restaurants and more.

The proposed standard, largely based on the state agency's outdoor regulations, will require employers whose workplaces at times are at least 82 degrees to have a written Indoor Heat Illness Prevention Plan.

The standard, once it takes effect, will affect employers throughout the state and many will have to take steps and invest in equipment and planning to ensure compliance. The preventative measure to which most employers will likely resort is air-conditioning.

The Standards Board wrote in its proposal, according to the *Cal-OSHA Reporter* trade publication: "There is likely to be a particular need to reduce temperatures in large warehouses, manufacturing and production facilities, greenhouses, and wholesale and retail distribution centers."

Other facilities that would likely also need to install HVAC units include restaurant kitchens and dry cleaners. They may also need to improve air circulation in their operations.

Under the proposal, the following regulations apply to a workplace where the indoor temperature exceeds 82 degrees.

Access to drinking water

Employers are required to provide access to potable water that is fresh, suitably cool and free of charge.

It must be located as close as practicable to the work area, as well as indoor cool-down areas where employees can rest. If an employer doesn't provide water continuously, it will be required to provide at least one quart per hour per employee per shift.

Employers should encourage frequent water consumption.

Access to cool-down areas

Employers must provide at least one cool-down area during shifts, and grant a cool-down break to staff who ask for one.

Workers taking cool-down breaks shall be monitored and asked to stay in the area if they are experiencing heat illness symptoms. As long as symptoms persist, they may not be ordered back to the work they were doing.

Control measures

Employers can implement a number of measures to protect their workers:

Engineering controls – This can include barriers between heat sources and employees, isolating hot processes from workers, air-conditioning, cooling fans, mist fans, swamp coolers, ventilation, etc.

Administrative controls – This can include limiting exposure by adjusting work procedures, practices or schedules (working during cooler periods, using work/rest schedules or reducing the speed of work).

Personal heat-protective equipment – This could include water- and air-cooled garments, cooling vests and more.

See 'Heat Waves' on page 2

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Think Twice Before Scanning That QR Code

QR CODES – short for Quick Response codes – are everywhere these days, on the tables at restaurants, on posters, print and electronic advertising, and even during TV programming and commercials.

But now, even these are prone to misuse and if one of your employees scans a bogus one, the scammers can potentially steal funds and business or personal data. The FBI recently warned that criminals are using tampered codes to redirect people to malicious sites that could access your firm's sensitive data.

They can send the code through e-mail as promotion codes. They also may paste the fake code on the original one, such as on parking meters, flyers, or a restaurant table where the original code would bring up the menu. The FBI says criminals are using QR codes in two ways:

1. When scanned, the code takes you to an imposter phishing website trying to trick you into logging in, hoping that you will use an existing username and password, or share other personal or banking information.

The QR code releases malicious code – such as malware, ransomware and trojans – onto your phone, allowing criminals to track information from your phone and even lock you out of the device and only releasing it if you pay up.

2. The QR code can compose pre-written e-mails and send them from your account. These e-mails are often new phishing e-mails aimed at getting your contacts to open and click on malicious links. Scammers can also program the codes to open payment sites and follow social media accounts.

Train Your Staff

Cyber security firm Aura and news site TechTarget recommend training your staff to:

- **Avoid opening QR codes in mail** – Do not scan QR codes received in regular mail and e-mails. Delete the latter and notify the IT department.
- **Avoid log-in pages** – If a QR code takes you to a log-in page, do not enter your credentials.
- **Look for signs of tampering** – Scammers may place QR code stickers over legitimate ones. Check to see if the code is on a sticker above another one, or for signs it has been tampered with.
- **Preview the URL first** – The box that opens when you scan a QR code includes text identifying the site to which it will direct you. Beware of an URL that doesn't look complete or if you can't read it.
- **Check for signs it's not legit** – Clues a site is not legit include misspelled words or odd grammar. The design may be shoddy and the images low resolution.
- **Watch out for QR codes in public places** – These codes may have been placed there by a scammer.

IT department actions

Your IT and/or security team should also ensure that:

Security software is up to date – Make sure that users are running the latest security software on any mobile device that has access to corporate resources. The software should be able to protect against device takeover attacks, phishing attacks and other mobile device exploits.

MFA is implemented across the organization – Implement multifactor authentication requirements across your company as an interim measure, and then gradually work on adopting an authentication solution that does not rely on passwords.

Many QR code-based attacks are designed to trick users into entering their passwords so that cyber criminals can steal their credentials.

If you can eliminate the need for passwords, you can greatly reduce the success rate of these attacks. ❖



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Observe Employees Closely During Heat Waves

Emergency response procedures

Employers will need to develop and have in place emergency response procedures that workers and supervisors can follow in case they are experiencing heat illness.

Acclimation steps

Employees should be closely observed during heat waves, and new workers must

be closely observed during their first 14 days of work to ensure they are acclimating.

Training

Employees and supervisors will need to be trained on:

- Personal risk factors for heat illness.
- Their employer's procedures for complying with the regulation.
- The importance of frequent water consumption.
- The importance of acclimation.
- Signs and symptoms of heat illness, and first aid or emergency response procedures. ❖

Workers' Compensation

Rating Bureau to Recommend 0.3% Rate Hike

IN A SIGN of the long-lasting effects of reforms enacted a decade ago, California's workers' compensation rate-making agency will recommend that average benchmark rates increase a mere 0.3%.

The recommendation by the Workers' Compensation Insurance Rating Bureau, based on claims costs and frequency remaining low and slower cost inflation, would apply to policies incepting on or after Sept. 1, 2023.

After the Rating Bureau's governing committee approved the recommendation, it now heads to the insurance commissioner, who will hold a hearing and then decide whether to approve the recommendation or order a different increase or decrease in the benchmark rate.

The benchmark rate, also known as the pure premium rate, is a baseline that covers just the cost of claims and claims adjusting, but not other overhead and profits.

The pure premium rate is an average across all class codes, with some industries seeing higher increases and some enjoying rate decreases. Insurers use the rate as a guidepost to set their own prices.

Individual premiums that employers pay will depend on a number of factors, including the pure premium rate, the carrier's own pricing methodology, and the employer's claims and claims cost history, location and industry.

Benchmark rate may actually decrease

If his recent history is any guide, Insurance Commissioner Ricardo Lara is likely to order a pure premium rate decrease. Last year, after the Rating Bureau recommended a 6.9% hike, Lara ordered that rates stay the same.

The *Workers' Comp Executive* trade publication predicts that he

will reduce rates about 3%, but notes that "Individual classes can go up or down as much as 25%."

The tiny rate increase recommendation is based on continuing downward pressure on claims costs since last year. Drivers of the rate recommendation include:

- Lower claims cost inflation
- Lower frequency of claims
- Lower overall claims costs
- Stable medical costs
- Fewer COVID-19 claims
- Lower claims adjusting costs.

One other reason rates continue to decline is that workplaces are generally safer than ever. The number of workers' compensation claims hit a low of 13 per 1,000 workers in 2022, down from 49 in 1991.

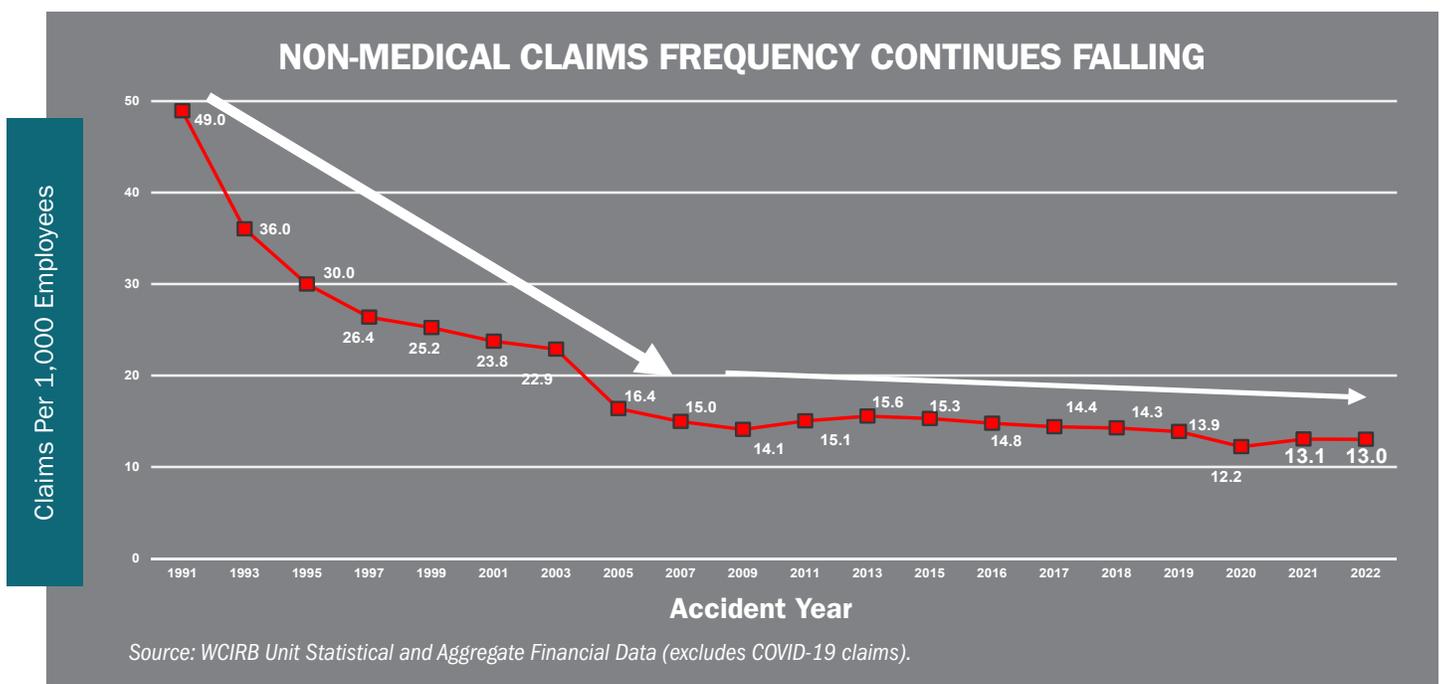
The only year that was lower than 2022 was 2020, due to the strict measures that shut workplaces across the country when the COVID-19 pandemic first hit.

One other bit of good news: COVID-19 workers' comp claims have slowed dramatically, accounting for just 2.2% of claims between March 2022 and February 2023. That's compared with 6.2% of claims in 2022, 5.2% in 2021 and 15.3% in 2020.

Decision expected this summer

Commissioner Lara will hold a public hearing on the recommendation in the coming months, after which he will issue a decision to approve the filing or set another rate. We'll keep you posted at the time.

If you have questions about your workers' compensation coverage, please call us anytime. ❖





Coverage Gap

PAGA Case Insurance Recovery Chances Slim

THE AVERAGE cost for employers of a court case brought under the California Private Attorney General Act was \$1.1 million in 2021, according to the CABRIA Foundation. But the insurance policies that business owners would expect to cover legal costs, settlements and judgements for these claims may not provide much coverage.

PAGA allows an aggrieved employee to stand in the shoes of the California Labor and Workforce Development Agency to seek civil penalties against their employer on behalf of themselves, other employees, and the State of California for Labor Code violations. Many of the actions concern allegations of wage and hour infractions.

These claims can be costly for employers, including a potentially burdensome discovery process, as PAGA plaintiffs may request and receive a significant amount of information from the employer.

PAGA claims, however, are not limited to wage and hour claims. They can a multitude of labor law violations, including discrimination, retaliation and failure to protect the health and safety of employees.

The court also held that if a plaintiff in a PAGA action is bound to arbitration, they automatically lose standing to prosecute claims on behalf of other “aggrieved” employees and remaining PAGA claims must be dismissed.

The court left one important question open: whether an employee compelled to arbitrate their individual PAGA claims loses standing under California law to pursue representative claims on behalf of other employees.

The California State Supreme Court is scheduled to hear a case to clear up this matter. If the judges rule that the case of an employee bound to arbitration can still proceed in court for the other employees they represent, it may render the U.S. Supreme Court ruling meaningless.

The insurance conundrum

That leaves employers in a difficult position in terms of their insurance coverage.

The first policy an employer would naturally turn to is their employment practices liability insurance (EPLI), since it is specifically designed to cover workplace actions by employees.

The other policy they may consider tapping is their directors and officers insurance, but that too may offer little cover.

However, EPLI policies typically exclude wage and hour claims (the most common PAGA claims), or they will impose significant limits on what they will pay out for such claims. Similarly, D&O policies for private companies also exclude wage and hour claims, and policies for publicly traded companies.

Additionally, most D&O and EPLI policies will not cover penalties, which is typically the way which PAGA awards are assessed. When employees sue under PAGA, they cannot seek lost wages or damages, rather they can only seek penalties.

Your broker may be able to try to negotiate supplements for wage an hour.

In the end, the best strategy is risk management-based, one that leans very heavily on accurate time sheets, allowing for breaks and appropriately paying for overtime.

Recordkeeping is the key versus trying to find an insurance product to cover poor risk management. ❖

TYPICAL PAGA CLAIMS

Claims typically allege wage and hour violations, such as:

- Unpaid off-the-clock work during meal periods,
- Misclassification of employees as independent contractors, and
- Rounding employee time entries.

Recent action

Employers did get a semblance of reprieve last year when the U.S. Supreme Court ruled that employers can compel arbitrations for employee-initiated PAGA actions, if they have signed arbitration agreements.