

STAY COOL CALIFORNIA

By Meghan Clark

Within weeks our cool spring mornings will be a thing of the past and summer will be in full swing. Increased temperatures bring increased health risks for employees and Cal-OSHA continues to cite employers for failure to comply with heat illness regulations.

Employers should also be aware that as of January 1, 2011, it is easier for Cal-OSHA to establish a “serious violation” under Cal-OSHA’s penalty matrix. Prior to the amendment to California Labor Code section 6432, Cal-OSHA was required to show that there was a “substantial probability” that the employer’s safety violation could result in death or serious physical harm to its employees.

“Substantial probability” meant that Cal-OSHA had to show there was a likelihood of 51% or more that death or serious physical harm would result from the employer’s violation before the violation could be classified as “serious.” The new law substitutes the words “realistic possibility” for “substantial probability.” Although the phrase “realistic possibility” is not accompanied by a specific definition, this new phrase is intended to reduce Cal-OSHA’s burden to show that an employer engaged in a serious violation.

The amendment to section 6432 also expands the definition of “serious physical harm.” Relevant to heat illness citations, any in-patient hospitalization or impairment sufficient to cause a part of the body or function of an organ to be permanently or significantly reduced in efficiency now qualifies as “serious physical harm.”

However, Cal-OSHA inspectors are now required to issue a form to the employer outlining the alleged violations and soliciting information from the employer at least fifteen (15) days before the inspector issues a serious violation citation.

Inspectors are also required to make a reasonable attempt to consider the employer’s safety training, safety procedures, supervision, communication systems and other efforts that the employer had engaged in prior to the alleged violation. Cal-OSHA is supposed to consider what a reasonable and responsible employer would have done in the same situation before it issues a “serious violation” citation.

The combination of the lowered standard for serious violations with Cal-OSHA’s focus on heat illness prevention means that employers must be even more vigilant in addressing heat illness issues or risk hefty fines.

In particular, employers should be aware of the following requirements regarding heat illness:

- Employers must provide one quart of water per employee per hour per shift. Water must be cool and the employer must provide cups and a place for the employee to dispose of the cups.
- Employers must provide shade to employees. According to the applicable regulation, shade is NOT a car without air conditioning. Shade is mandatory when temperatures are predicted to be 85 degrees or more but may also be required when other risk factors are present like an employee who is acclimatizing to working outside or humidity. Shade should be available within a 2 ½ minute walk of an employee's location.
- Employers must accommodate additional rest breaks to avoid heat illness. These additional breaks must be no less than five minutes long and are in addition to an employee's normal rest and meal breaks.
- Employers must acclimatize employees to the heat.
- Employers must have a system in place to monitor the weather, check the availability of water and shade for employees and to respond quickly if there is a heat wave.
- Employers must train their employees and supervisors to handle heat illness issues.

Employers who revise their IPPs to include a heat illness policy, train their employees and supervisors on heat illness avoidance policies and engage in active monitoring of working environments will be in the best position to not only avoid heat illness in their employees but will be best situated to avoid problems with Cal-OSHA. Finally, although the regulations specifically reference employees who work outdoors, Cal-OSHA recently released a policy flier relating to employees who work inside.



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