

# COMPLIANCE BULLETIN



## The Status of OSHA's Heat Hazard Protection Standard

On Oct. 27, 2021, OSHA [published](#) an advance notice of proposed rule-making to officially start the process of creating a mandatory heat hazard protection standard. Currently, OSHA has only a [recommended](#), not required, workplace heat standard. However, many states have their own heat exposure standard as part of their OSHA-approved [state plans](#).

This standard continues to be in the pre-rule stage and is still under consideration. As OSHA develops more information, the [Office of Information and Regulatory Affairs](#) (OIRA) will also make decisions relating to the scope of the standard and the requirements it may impose.

### Current Initiative

On Sept. 20, 2021, OSHA [announced](#) enhanced measures that would better protect workers in hot environments and reduce the dangers of exposure to ambient heat. These measures include implementing an [enforcement initiative](#) on heat-related hazards, developing a National Emphasis Program (NEP) on heat inspections and establishing a mandatory workplace heat standard.

This initiative prioritizes heat-related work activity interventions and inspections on days when the heat index exceeds 80 degrees Fahrenheit.

### Action Steps

Employers should become familiar with the notice of the proposed rule and continue to monitor OSHA communications for updates on the development of the mandatory workplace heat standard.

### Additional Information

Workers most commonly affected by heat-related illnesses are:

- Postal and delivery services;
- Landscaping;
- Commercial building; and
- Highway, street and bridge construction workers.

Workers who most commonly suffer heat-related fatalities were:

- Landscaping;
- Masonry; and
- Highway, street and bridge construction workers.

### Important Dates

#### Oct. 27, 2021

OSHA published a proposed rule for a mandatory heat protection standard for workers in outdoor and indoor work settings.

#### Jan. 26, 2022

On Dec. 2, 2021 OSHA [extended](#) the deadline for the public to comment on OSHA's notice of proposed rule-making from Dec. 27, 2021 to Jan. 26, 2022.

# COMPLIANCE BULLETIN



## Advance Notice of Proposed Rule-making

This notice is the official first step in the process of creating a mandatory heat protection standard. This notice seeks public comment on the information OSHA should consider as it develops the new standard. If adopted, this rule would cover indoor and outdoor environments. Both environments are covered because even though most heat-related fatalities traditionally occur outdoors, heat-related illnesses are still possible in indoor work environments.

Specifically, OSHA is interested in obtaining additional information about the extent and nature of hazardous heat in the workplace and the nature and effectiveness of interventions and controls used to prevent heat-related injury and illness.

## Rule Background

According to the [Office of Information and Regulatory Affairs](#), to date, California, Washington, Minnesota and the U.S. military have issued their own heat protection standards. OSHA states it currently relies on the general duty clause (OSH Act Section 5(a)(1)) to protect workers from this hazard. Notably, from 2013 through 2017, California used its heat standard to conduct 50 times more inspections resulting in a heat-related violation than OSHA did nationwide under its general duty clause. In addition, it is likely to become even more difficult to protect workers from heat stress under the general duty clause in light of the 2019 Occupational Safety and Health Review Commission's decision in *Secretary of Labor v. A.H. Sturgill Roofing, Inc.*

OSHA was petitioned by the nonprofit Public Citizen for a heat stress standard in 2011. OSHA denied this petition in 2012 but was once again petitioned by Public Citizen, on behalf of approximately 130 organizations, for a heat stress standard in 2018 and 2019. Most recently, in 2021, Public Citizen petitioned OSHA to issue an emergency temporary standard on heat stress. OSHA is still considering these petitions and has, to date, neither granted nor denied them. In 2019 and 2021, some members of the U.S. Senate also urged OSHA to initiate the rule-making process to address heat stress.