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SB 1167 (2016) - CalOSHA's Indoor Heat Regulation

In 2016, then Governor Jerry Brown signed SB1167 into law, mandating that Cal/OSHA propose and adopt regulations to address the risk of heat illness in indoor workplaces by January 1, 2019. Although factors such as COVID-19 delayed the proposal of regulations, Cal/OSHA finally published the proposed regulations, along with a notice of public hearing and invitation for written comment. The notice of public hearing and the proposed regulations can be found [here](#).

In summary, CalOSHA proposed the addition of **section 3396. Heat Illness Prevention Indoor Places of Employment** to California Code of Regulations Title 8: Please note that the new section is intended to closely resemble **section 3395. Heat Illness Prevention in Outdoor Places of Employment**.

The stated scope and purpose of section 3396 is to establish protections for employees when their workplace temperature equals or exceeds 82 degrees Fahrenheit. Under section 3396, an Employer is required to implement and maintain a heat illness prevention policy for when temperatures meet or exceed 82 degrees. Employers would be required to accurately measure the temperature of indoor workplaces and if the 82 degrees threshold is met, Employers would also be required to measure and record the temperature and other environmental factors such as relative humidity, air velocity and radiant heat.

The required heat illness prevention plan for indoor workplaces must include, among other things, access to potable water, indoor or outdoor cooling areas that are less than 82 degrees, acclimation for newly assigned employees, encouragement of frequent cool down breaks, emergency response procedures and control measures to minimize the risk of heat illness.

What This Means for Employers:

Section 3396 is going to be adopted by Cal/OSHA in some form or another. However, Employers are encouraged to provide their input until the comment period ends on **May 18, 2023 at 5:00 p.m.** One provision of the proposed section 3396 that may be swayed by public comment is the additional requirement that Employers measure things like relative humidity, air velocity and radiant heat. Employers should provide their input as to the costs and practicality of taking such measurements.

Employers are also encouraged to start reviewing their Injury and Illness Prevention Policies now to prepare for updates consistent with section 3396. If employers already have a Heat Illness Prevention Policy for outdoor workers, they still need to have a policy consistent with section 3396 for any indoor workers they may have. Even if Employers provide air conditioning to employees' work areas, if the failure of air

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conditioning systems would result in the rise of temperatures to 82 degrees (or whatever threshold Cal/OSHA ends up adopting), Employers should ensure they have a heat illness policy in place to ensure they do not violate section 3396.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.