

LEGALLY SPEAKING

By Bob Dunlevey



OSHA “HOT” OVER HEAT STRESS

OSHA is now focusing on heat related illnesses in the workplace even though it has no Standard which specifically addresses working in a hot environment. It is aggressively pursuing employers and, in a Washington memo to OSHA’s Regional Administrators, it stated that “this memo directs the Field to expedite heat-related inspections and to issue Citations ... as soon as possible.” Therefore, employers need to take action now to ensure a workplace free of heat hazards or face costly citations and litigation.

As most employers know, but seldom address adequately, working in a hot environment puts stress on an employee’s body cooling system. Too much heat can result in dehydration, cramps, heat exhaustion and even a fatal heat stroke. The risk of heat stress depends upon many factors related to the individual employee and this makes the challenge of making a safe workplace for all even more challenging. Those risk factors include the employee’s physical condition, the temperature and humidity, clothing worn, the pace of work and how strenuous it may be, exposure to sun and environmental conditions such as air movement.

In utilizing OSHA’s General Duty Clause, Section 5(a)(1), the agency is **attempting to make “new law”** further regulating employers’ activities. A violation of the General Duty Clause may exist when workers have been working in a hot environment, the employer is aware

of the heat-related dangers, and has not taken adequate protective action for the workers – such as water, rest and shade. But, **OSHA expects even more** than water, rest and shade and that is why employers must take additional steps to address heat in the workplace. OSHA also insists upon implementing an acclimatization program for new employees and those returning from extended time away, such as vacations or leaves of absence. It also urges implementing a work/rest schedule and providing a climate controlled area for cool down. For those employers utilizing temporary employees, there is a greater risk of heat-related illnesses and OSHA would urge greater care in adopting an acclimatization program for them. Simply telling your employees that it is a hot day and they should take breaks when they need to and drink as much water as necessary, will not meet OSHA’s expectations and could very easily result in a citation. OSHA believes that employers should actively encourage at least 5 to 7 oz. of fluids be consumed every 15 to 20 minutes.

OSHA is urging that each employer establish a **heat stress program**, but when the employer does so it may very well be recognizing that there is a hazard in the workplace which needs to be addressed meaningfully. Then, the Compliance Officer may find your program inadequate. This is a dilemma for employers yet unresolved by the courts.

A **heat stress program** can have many **components**, including:

TRAINING

- Hazards of stress
- Responsibility to avoid heat stress
- Recognition of danger signs/symptoms because employees may not recognize their own
- First aid procedure

- Effects of certain medications in hot environment

PERSONAL PROTECTIVE CLOTHING/EQUIPMENT

- Light summer clothing allowing free movement and sweat evaporation
- Loosely worn reflective clothing to deflect heat
- Cooling vest and wetted clothing for special circumstances

ADMINISTRATIVE/ENGINEERING CONTROLS

- Assess the demands of all jobs and have monitoring and control strategies in place for hot days and hot workplaces
- Schedule hot jobs for cooler parts of the day
- Reduce physical demands
- Permit employees to take intermittent rest breaks with water breaks and use relief workers
- Have air conditioning and shaded areas available for breaks/rest periods with ice available
- Increase air movement
- Exhaust hot air and steam

HEALTH SCREENING/ACCLIMATIZATION

- Let employees get used to hot working conditions by using a staggered approach over several days, such as beginning work with 50% of the normal workload and time spent in the hot environment and then generally increase it over five days
- Make employees aware that certain medications, such as Diuretics, anti-hypertensives (blood pressure), anti-cholinergics (pulmonary disease – COPD), and alcohol abuse, can exacerbate problems.

OSHA is also inclined to cite an employer if prompt remedial action is not taken when an employee falls victim to heat stress. Employers should establish specific **procedures for** heat-related **emergencies** and provisions that First Aid be administered immediately to employees who display symptoms of heat-related illness. Those employees may very well resist First Aid because of the confusion caused by heat stress. Therefore, training on the signs and symptoms is also encouraged.

With summer coming on, and if it is anything like last summer, heat stress issues could rear their ugly head. Don't be caught ill-prepared for an incident and a subsequent visit by OSHA – **establish your heat stress program today**. Dunlevey, Mahan & Furry currently is defending a significant heat stress fatality case and further guidance from the courts could result from this case. For more information regarding heat stress programs and the law, contact Bob Dunlevey, Dunlevey, Mahan & Furry (937) 223-6003.