

September 26, 2022

Ms. Carmyn Shute
Washington Department of Labor and Industries
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(sent via email to carmyn.shute@lni.wa.gov)

RE: Comments on the Proposed Outdoor Heat Exposure Rules

The Washington Retail Association (WR) represents more than 4,000 storefronts statewide that range from large national chains to small shops. Our members include wholesalers, dealers, professional services, and mall owners and operators. Our members employ about 400,000 people and are a major contributor to both the economy and well-being of every community in the state.

WR has members impacted by the current emergency rule and any future permanent outdoor heat exposure rules. For example, auto repair shops (including those that provide emergency road services), garden outlets, home supplies, delivery services, and building material outlets often have employees that work outdoors intermittently.

WR members are committed to the safety and health of their employees. WR regularly provides members with training and education on best practices to ensure safe and healthy workplaces for employees. Although WR does not believe lowering the temperature threshold in the current emergency rule to 89 degrees F was warranted, the structure of the emergency rule, which is largely based on providing tools and information for employers and employees is workable. The emergency rule includes common sense requirements for shade, water, and rest breaks during times of high temperatures.

WR submitted comments regarding the drastic change in direction in the proposed rules discussed on the August 4th webinar (those comments are attached). WR is pleased that L&I proposed a modified rule approach on August 31 that eliminated the egregious and unnecessary rest period requirements when temperatures exceed 90 degrees F.

We note, however, that the August 31st proposal also cites that work/rest break requirements at temperatures exceeding 100 degrees are “under discussion and remain open for review”.

Based on the outcome of two years of emergency outdoor heat exposure rules, and the discussions at the August 4th and 31st webinars, the Washington Retail Association suggests the following principles to guide the development of a permanent rule:

1. The current emergency rule's reliance on providing employers and employees with information, education, and tools is effectively limiting heat-related illness (HRI).

The data presented by L&I in the August 4th webinar shows that only 0.056% of accepted claims across all business sectors (or about 59 claims per year), before emergency rules, were for heat-related illnesses. The data also hints that claims have declined since the adoption of the first emergency rule in 2021. For the Retail sector, Dr. Bonauto's data shows only 23 accepted HRI

claims over the period (**or 0.02% of claims in the retail sector**). L&I data for 2018-2021 reveals only 3 HRI claims in the Retail sector for that period 2018-2021 (**or 1 claim per year**).

The WR believes that the permanent rule, (1) should recognize the low incidence of heat-related claims and, (2) recognize that the emergency rule's reliance on awareness, education, training, and safety planning coupled with common sense requirements for water/shade availability and the current rest break requirements is, indeed, working well to protect employees. They are easy to understand and can be implemented effectively.

The data presented by L&I related to the proposed permanent rule has not shown increased protection with the added complexity and burdensome new requirements.

2. **Keep work/rest break requirements simple and effective.** Although the WR remains concerned with L&I's decision to lower the trigger temperature requiring 10-minute rest breaks every two hours to 90 degrees, WR acknowledges the current emergency rule requirement is simple to understand and implement.

The August 4th rule proposal; however, adds four different work/rest break requirements. At 100 degrees, the proposal requires almost 50% of the time at work to be in rest breaks. If implemented, the proposal would severely impact the ability of public and private sector employers in construction, road repair, maintenance, agriculture, outdoor recreation, firefighting, utilities, and other sectors to meet the needs of their customers and communities.

WR believes the August 4th work/rest break proposal is overly burdensome and challenging for employers to implement. To implement the August 4th proposal, employers would need to constantly monitor temperatures when they reach 90 degrees and potentially adjust work schedules at five-degree intervals if temperatures increase.

As mentioned earlier, data on heat-related illness claims indicates there is little incremental protection for workers by adding complexity and new requirements. WR urges L&I to keep the rule simple and effective, and use data to support them during the rule-making process.

3. **Provide latitude or exemptions where workers have readily available access to temperature-controlled space, shade, or another suitable cover.** Retail settings where employees may be working intermittently outdoors include auto repair shops (including those that provide emergency road services), garden outlets, home supplies, delivery services, and building material outlets. The key attribute, however, is that these workers are outdoors *intermittently* with water, shade, and indoor settings readily available. Even employees providing roadside emergency services have access to an air-conditioned vehicle.

Based on the extraordinary low incidence of heat-related illness claims in the retail sector (less than one claim per year since 2018), and the nature of retail work, WR believes that the permanent rule should exempt or provide latitude for the retail sector because of the *low-risk situations* for workers in these settings. At a minimum, the data shows that the emergency

rule's reliance on education, tools, guidance, and awareness is effective at limiting heat-related illness claims in the retail sector.

The latitude WR requests is to provide an exemption for employers whose workers work outdoors for 30 minutes or less within a 60-minute timeframe.

4. Lowering the heat triggers provides little incremental protection, adds confusion, and fails to reflect common weather conditions across Central and Eastern Washington.

From the earlier webinars, it appears that Dr. Bonauto's data provides a substantial basis for the Department's proposed rule. That data showed that 44% of the HRI claims were submitted when temperatures were less than 89 degrees F. Using the Retail sector data, that means only *10 claims or less than 1 per year*, were submitted for HRI-related claims over the 11 years when temperatures were less than 89 degrees F. For the 2018-2021 period, using the 44% rate below 89 degrees F, the claims declined to *0.45 claims per year*. Again, that small number of incidences suggests that working conditions in the retail sector under current measures are effective in protecting retail employees. Therefore, we do not believe the data justifies lowering the trigger temperature to 80-degree F.

Moreover, the proposed heat trigger does not recognize the climatic differences between Western and Eastern Washington. It is simply common sense to acknowledge those differences.

5. Simplify the proposed rule for acclimatization. L&I presented considerable information on environmental and personal risk factors that may contribute to HRI. Employers have no ability to control the environmental or personal risk factors, nor can validate information provided by employees. WR recognizes the need to acclimatize if an employee changes work locations or other situations arise. However, it is unclear how employers can effectively monitor or demonstrate they are adhering to the proposed rule. An employer has no way to ensure they have accurate information on an employee's personal history for 14 days preceding a heat event. Moreover, the personal risks involving alcohol, drug use, and medical conditions will not be disclosed voluntarily by many, perhaps most, employees.

WR urges that acclimatization standards focus on education, training, and awareness, like the emergency rule, and not attempt to set rigid standards that only add confusion and uncertainty

6. Any permanent rule should focus on the high-risk periods, and not be in effect year-round.

The data does not support a "year-round" rule. Again, citing Dr. Bonauto's data (slide 42 from the March webinar), 76% of the accepted HRI claims occurred in the July-September period. Again, recognizing that the total number of accepted HRI claims is only 0.06% of the total number of claims over the same period, WR believes any outdoor heat rule should focus on the time of highest risk, and not put unnecessary burdens on both employers and employees during the remainder of the year.

The Washington Retail Association supports responsible rules to ensure the health and safety retail employees. We believe that L&I's data demonstrates that the combination of safe working conditions

that exist for retail employees, combined with the focus on education, training and common-sense rest, shade and water requirements are proving effective.

WR urges L&I to refrain from adding complexity and new requirements to an approach that is proving effective.

Thank you for considering these comments. We look forward to working with L&I on this important issue.



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