

September 28, 2022

Ms. Carmyn Shute

Washington Department of Labor and Industries

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Tumwater, WA 98501-5414

(Sent via email to carmyn.shute@lni.wa.gov)

RE: Comments on the Proposed Outdoor Heat Exposure Rules

The Wenatchee Valley Chamber of Commerce (WVCC) works on behalf of public and private employers across Chelan and Douglas Counties. Following the adoption of the Outdoor Heat Exposure emergency rules in June, the WVCC urged the Department of Labor and Industries (L&I) to initiate permanent rule-making on protecting employees from outdoor heat exposure instead of relying on emergency rule authority.

The WVCC applauds L&I for quickly responding by initiating permanent rulemaking and hosting webinars on August 4 and August 31 to outline potential rule concepts. Additionally, the WVCC appreciates that the two webinars have been hosted in both English and Spanish. Our region includes a substantial number of Spanish speaking residents. We are grateful that L&I is taking the extra effort to host and distribute educational materials on heat related illness in multiple languages. We support continuing that important work.

Employers and employees in Chelan and Douglas Counties could be impacted more than other areas of the state from any new regulations due to the normal spring and summer temperatures in our region. The WVCC supports responsible rules to ensure the health and safety of our region's workers and believes that recent experience demonstrates that current approaches are proving effective.

Based on the outcome of two years of emergency outdoor heat exposure rules, and the discussions at the August 4th and 31st webinars, the WVCC offers the following two principles to guide development of permanent rules:

1. **Providing employers and employees with information, education and tools is effectively limiting heat related illness (HRI).** The two previous emergency rules have relied heavily on providing employers and employees with information and tools on how to reduce the risk of heat related illness (HRI). The emergency rules include requirements for employer/employee education, training, awareness, and safety plans. They also include common sense requirements for shade, water, and rest breaks. They are easy to understand and can be implemented effectively.

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 illness. The data also hints that claims have declined since the adoption of the first emergency rule in 2021. The WVCC 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.

2. **Keep work/rest break requirements simple and effective.** Although the WVCC is concerned with L&I's decision to lower the trigger temperature requiring 10-minute rest breaks every two hours to 90 degrees, we acknowledge the 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 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. The WVCC believes the August 4th work/rest break proposal is overly burdensome and challenging for employers to implement. For example, simply implementing the August 4th proposal would require employers to constantly monitor temperatures when temperatures reach 90 degrees and potentially adjust work schedules at five-degree intervals if temperatures increase.

Accordingly, the WVCC appreciates that the August 31st rule proposal reverts to the emergency rule work/rest period requirement. We also note that the August 31st proposal also cites that work/rest break requirements at temperatures exceeding 100 degrees are "under discussion and review".

Moving forward, the WVCC again urges L&I to look to the data that underpins the proposed rule – only 0.056% of claims before adoption of emergency rules were for heat related illness, and the trend is improving. We believe the data underpinning the rules, combined with two years' experience with the emergency rules, shows that adding the complexity and new requirements contained in the August 4th proposal would add negligible, if any, incremental protection for workers.

The two previous emergency rules relied heavily on providing employers and employees with information and tools on how to reduce the risk of heat related illness (HRI). They include requirements for employer/employee education, training, awareness, and safety plans. They also include common sense requirements for shade, water, and rest breaks. They are easy to understand, and employers can implement them effectively. The data shows they are working.

The WVCC urges L&I to learn from experience and refrain from adding complexity and burdensome requirements to these rules. We also applaud L&I for its efforts to make all materials and public discussions available in multiple languages. All residents need to be aware and educated.

Thank you for your consideration of these comments. We look forward to working with L&I on the development of these rules.

Respectfully,

Steven Wilkinson

Steven J. Wilkinson
Executive Director
Wenatchee Valley Chamber of Commerce