



August 31, 2022

Carmyn Shute
Department of Labor and Industries
Carmyn.shute@lni.wa.gov

Dear Ms. Shute,

On behalf of the Associated General Contractors of Washington (AGCWA), please accept the following written comments on the proposed employee outdoor ambient heat exposure rule. AGCWA is the state’s largest and oldest commercial-construction trade association and is the recognized safety leader in the industry. Maintaining a safe and healthy workplace is a top priority for our members and today our members have successfully protected our employees through best practices that mitigate risks to our employees during high heat exposure.

First, our successful practices in the industry are reflected in the recent presentation from Dr. David Bonauto on the extremely low number of workers compensation claims filed in Washington State. Dr. Bonauto presented that there were 918 confirmed claims over an 11-year period for the entire state including all industries. To put this number into context, LNI reported receiving 80,450 State Fund claims for FY 2021 and 84,387 for FY 2020. AGCWA believes that the injury/claims data does not support the need for this rule. We believe the current rule in place adopted in 2008 protects workers and is supported by the claims data.

Second, the construction industry presents unique challenges when it comes to outdoor work. The proposed rule is overly prescriptive and limits the amount of work and craft earning potential that can be completed during the peak construction season. The construction season has a finite window specifically for our paving contractor employers, where tight timelines are required. We would like the department to acknowledge that there are different industries with unique circumstances and situations and the proposed rule does not recognize this. Many factors including the type of work performed, work conditions, personal risk factors, employer-implemented controls should be considered. Your expectations on acclimatization are cumbersome and unrealistic for multiple geographic areas in Washington state as they may never be warm enough to acclimate for long enough to acclimate.

Last, the rule identifies “personal risk factors” such as diabetes, heart disease, high blood pressure and pregnancy that can greatly contribute to heat related illness. Employers are generally not allowed to ask these types of health-related questions upon hiring. This puts employers in an indefensible position to address specific employees and their personal risk factors. This needs to be reconciled and addressed in the permanent rule.

Thank you for the opportunity to comment and we look forward to our continued work together to make Washington workplaces the safest in the country.

Sincerely,

Mandi Kime, Director of Safety
Associated General Contractors of Washington

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