Building Industry Association of Washington
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August 15, 2022

Carmyn Shute, Administrative Regulations Analyst
Department of Labor & Industries
Division of Occupational Safety and Health
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Ms. Shute:

The Building Industry Association of Washington (BIAW) is the voice of the housing industry as the state's largest trade association with nearly 8,000-member companies. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of Washington residents so members can provide a variety of housing options that are affordable at all income levels of Washington residents. On behalf of BIAW, please accept the following comments regarding the Department of Labor and Industries' (The Department) Ambient Heat Exposure permanent rulemaking.

1. The Department's extremely short timelines for comments on the proposed rule are unreasonable and do not allow for sufficient analysis by affected stakeholders. The Ambient Heat Exposure proposal is complex and it takes more than a few days for affected industries to determine the impacts, both negative and positive, of the rule. Allowing only four working days to provide comment (August 4-10), especially during summer vacation and the busiest time of year for construction does not provide sufficient time. Only after stakeholders raised the issue of the short timeline did the Department allow an additional three working days for comments. This brief extension of the deadline is still unacceptable if the Department truly wants thoughtful comments and feedback from those potentially affected by the proposed new rules.

2. The Department has not sufficiently demonstrated the need for additional Ambient Heat Exposure rules beyond those implemented in 2008. An average of about one HRI claim per week was accepted between 2006 and 2017 – an extremely low incidence rate considering the millions of hours worked in all industries throughout the state during that twelve year period. The current rules seem to be very effective when viewed in terms of hours worked versus claims accepted.

3. Employer responsibilities for employee acclimatization is a major new addition to the Ambient Heat Exposure rules. However, many of the requirements under this section seem to ignore the Department's own "science" and, instead prescribe a "one size fits all" approach that will add new burdens to employers and employees while providing

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questionable benefit. For example, the Department's proposal fails to recognize whatsoever the current state of acclimatization of "newly assigned" employees. Many of these workers, especially in the construction workforce, have been working and or living in the same or warmer conditions than those that they will experience with the "new" employer, and, based upon L&I's own information, should be considered acclimatized upon arrival at the new jobsite. Why should "close observation" of these already acclimatized employees be necessary?

4. The new proposed "trigger temperatures" are arbitrary and unnecessarily low, especially for those wearing "all other clothing". The current emergency rule's trigger temperature of 89 degrees seems to be effective, whereas a trigger temperature of 80 degrees for all except those in non-breathable clothing seems far too low. A temperature of 80 degrees in eastern Washington would be considered a refreshingly cool day during most of the summer. The Department loses credibility among employers and workers when proposing such trigger temperatures.

5. There is great concern about the Department's proposal to require preventive cool-down periods "as necessary". There is no limit on these employee -initiated cool down periods, and these periods are required to be paid for by employers. While nearly every employer would certainly allow a worker to take a break to prevent overheating, there are currently no protections for employers when workers take advantage of the open-ended language in the rule that would allow unlimited breaks for any employee with the threat of a fine for discrimination or retaliation against an employer that questions the validity of excessive preventive cool down periods. This must be addressed in future drafts of the rule.

6. The Department identifies several "personal risk factors" that can contribute greatly to Heat Related Illness, including many conditions that are unknown to employers (and, in some cases also unknown to workers). Such conditions as diabetes, heart disease, high blood pressure, pregnancy and others are listed by L&I as contributing factors, but employers are generally barred from asking employees if they suffer from these or other conditions, and thus cannot take appropriate preventive measures for those at higher risk of HRI. In addition, if employees with these conditions are treated differently (sent home early, told to stay home, etc.) in order to prevent HRI, employers may be subject to fines for discrimination. This is an untenable position for employers and must be resolved.

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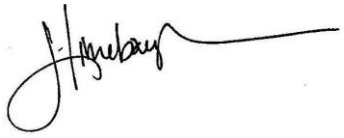
Thank you for your consideration of these comments on the proposed rule. We would be happy to meet with Department staff to further discuss and/or clarify our comments. As the rulemaking process moves forward, we also anticipate the submission of additional comments as questions or concerns arise.

Regards,



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