



Washington
Hospitality
Association

August 15, 2022

Washington State Department of Labor and Industries
Attn: Outdoor Ambient Heat Exposure Rulemaking Team Via: Carmyn Shute
7273 Linderson Way Southwest
Tumwater, WA 98501

Subject: Outdoor Ambient Heat Exposure Rulemaking

On behalf of the Washington Hospitality Association and the more than 6500 restaurants, hotels and local hospitality businesses we represent state-wide, we would like to express our appreciation for the Department moving forward with the traditional rulemaking process. We find extreme value in returning to a more robust stakeholder process on issues such as the outdoor ambient heat exposure rule.

The Washington Hospitality Association appreciates the opportunity to participate in these discussions and respectfully asks the Department to thoughtfully consider the following suggestions and initial comments:

Scope and Purpose

The Hospitality Association and our members strive for and support safe environments for our employees and communities. Please consider a change in the heat exposure requirements in situations where an employee is not exposed to the heat consistently throughout a sixty-minute window, has constant access to shade to reduce body temperatures, and has the opportunity for immediate engineered relief between tasks and exposures.

For example, employees who work on patios during the summer months in Washington: While meeting the definition of outside, patios are traditionally filled with shade from umbrellas and other structures, which provide constant relief for guests and employees. In addition, our employees are consistently in and out of the building finding relief from the heat due to the service nature of our industry.

Both the emergency rule and draft rule suggest that risk of heat exposure exists when an employee works fifteen minutes outside within a sixty-minute window and requires a ten-minute break every two hours. We do not believe this takes into consideration the unique outdoor work that employees in our industry perform, the consistent access to shade to reduce body temperatures, and constant access to engineered controls when employees are moving in and out of the building. We believe our industry has a unique ability to provide a safe work environment without this additional requirement and would ask the Department to consider this change.



Definitions

While flexibility for implementation is important, it is equally important to have clarity and alignment on terms. We respectively request the following definitional clarifications:

Engineering controls. We request “fans” be added to the list of accepted devices.

Risk Factors for heat related illness. We request that medications and physical condition be removed due the fact that employees are not required to share what medications they take, and physical condition cannot be identified without personal bias and judgement and could put employers in position to violate the American with Disabilities Act.

Employer and employee responsibility

Employee safety and training is an important aspect of the hospitality industry, and we appreciate the Department’s shared goal of workplace safety. In order to meet the needs of employees at all levels, we request that a written accident prevention plan be in a “language or form readily understood” by employees. This small but impactful change allows flexibility for employers to use additional forms of communication (i.e. pictures, graphics).

High heat procedures

The draft rule states that an employer will need to observe employees for signs and symptoms of heat-related illness by implementing an observation system. One of those options would be to “regularly” communicate with an employee who is working alone. The current use of “regularly” is vague and is subject to interpretation. It would be helpful if the Department could define what “regularly” means.

Information and training.

Under subsection 2, (C) we request the Department add “fans” to the list of approved administrative controls.

Proposed trigger temperature

The current and active emergency rule has a trigger temperature of 89 degrees and is already a significant shift from 100 degrees found in the emergency rule enacted in 2021. Due to the use of the Emergency Rule, the Department has failed to consider a small business economic impact statement on how the already large temperature shift has impacted small businesses. We ask the Department to reconsider the proposed temperature of 80 degrees and instead stay consistent with the 2022 emergency rule of 89 degrees. By staying consistent with the 2022 rule, the Department will have the opportunity to complete the crucial and necessary small business economic impact statement to mitigate the substantial compliance obligations imposed on employers.

Thank you for your consideration of the above changes to the outdoor ambient heat draft rule.

Cheers,
Samantha Louderback

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Senior Manager, State Government Affairs
Washington Hospitality Association