



*An alliance of the independent grocery and convenience store industries.*

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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 Food Industry Association, below are concerns and proposed changes to the proposed permanent rules regarding employee Outdoor Ambient Heat Exposure Rulemaking. The Washington Food Industry Association represents the independent grocery and convenience store industries in Washington state. Additionally, we represent suppliers to our industry from distribution to small, local farms. Our members are in all communities across the state and have employees who work indoors primarily but occasionally must be outside.

In the convenience and grocery industry, many employees go outside to throw garbage away, help at a gas pump, bring in carts, or a variety of other miscellaneous jobs. For our suppliers, there may be significant amounts of time spent loading or unloading trucks inside and outside a store. We ask you to 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, such as fans, between tasks and exposures. 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. Given that most of our employee time is spent indoors, we ask you to reconsider the need for these additional mandatory breaks.

The current and active emergency rule has a trigger temperature of 89 degrees which is already a significant shift from 100 degrees found in the emergency rule enacted in 2021. It is the department's obligation under RCW 19.85.030 to prepare a "small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry..." We ask the Department to reconsider the proposed temperature of 80 degrees and instead stay consistent with the 2022 emergency rule of 89 degrees. This will allow the

Department the opportunity to complete the small business economic impact statement to mitigate the substantial compliance obligations imposed on employers.

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. We understand how important observation can be in preventing heat related illness and deeply respect the need to keep a safe and healthy workplace. We are concerned about the expectation to analyze risk factors in relation to heat related illness. Our employers should not be in a position where they need to ask about medications or use their judgement to determine an employee's physical condition. We ask this definition to be removed. Secondly, one of the options for observation is to "regularly" communicate with an employee who is working alone. It would provide clarity if the Department could define what "regularly" means.

Finally, the department has provided limited workers compensation claims data. The department should further provide an analysis of heat related workers compensation claims before and during the implementation of any control mechanisms, and by industry, so stakeholders can better analyze and provide industry-specific advice to the department for permanent rules, if needed. Oregon shares a similar outdoor climate to Washington state, their permanent rules on outdoor heat exposure have only been in effect the last two months but give the department a wonderful opportunity to better analyze the effects of the rule on all industries and how the rule has impacted compensation claims in Oregon. This data could be used to better understand the ways in which claims have been reduced due to these more stringent rules.

Thank you for your consideration of our comments on the Outdoor Ambient Heat Exposure rules.

Katie Beeson  
Director of Government Affairs  
Washington Food Industry Association