



OSHA 30/30®

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Heat Stress - Update on OSHA Rulemaking and Enforcement

May 25, 2022

Manesh Rath



Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016, 2017 and 2018; selected by Super Lawyers 2016 – 2017, 2017 – 2018; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.

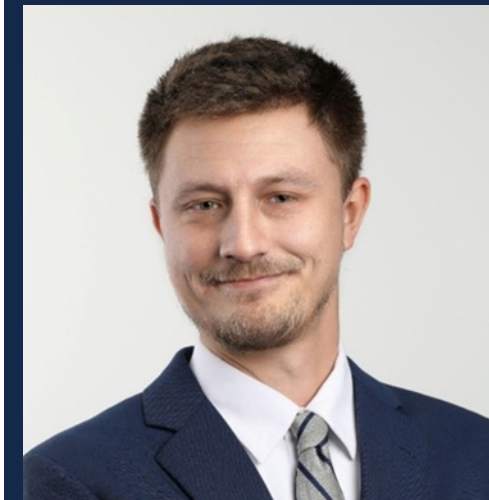


Taylor Johnson



Taylor Johnson advises clients on matters related to occupational safety and health law, employment law, and litigation. Taylor represents employer's interests in citations and investigations under federal OSHA and State Plans across the country. Additionally, Taylor counsels clients on an extensive range of environmental matters including compliance with U.S. chemical control laws, pesticide and pesticidal device regulation, domestic and international transportation of hazardous materials and dangerous goods, community right-to-know laws, energy efficiency regulation of products, Prop 65.

Prior to joining Keller and Heckman, Mr. Johnson promoted the development of energy and environmental legislation and policy at the state level.



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Ned Fitter



Ned Fitter has been McLean's Contracting Company's Safety Director since 2017. He is the creator of McLean's heat illness prevention program. Prior to McLean, he directed the operational applications of safety programs for heavy marine, heavy highway, heavy civil, demolition, energy and industrial sectors. Throughout his 21-year career he has been responsible for overseeing the safety management for countless projects, throughout the country.



Ned Fitter
Safety Director
McLean Contracting
Company

Topics to be Discussed:

- ◆ Background on Heat Illness
- ◆ NIOSH Recommendations
- ◆ State Heat Illness Standards
- ◆ National Emphasis Program
- ◆ OSHA Rulemaking Process
- ◆ OSHA General Duty Clause
- ◆ Practical Application by McLean Contracting Company
- ◆ Off the Record

What are the impacts of heat illness?

Heat Illness's Effects on Performance



- ◆ Excessive Fatigue
- ◆ Production goes down
- ◆ Lower attention spans
- ◆ From dehydration:
 - ◆ 2% - Impaired Performance
 - ◆ 4% - Capacity for muscular work declines

Factors affecting employee risk of heat illness

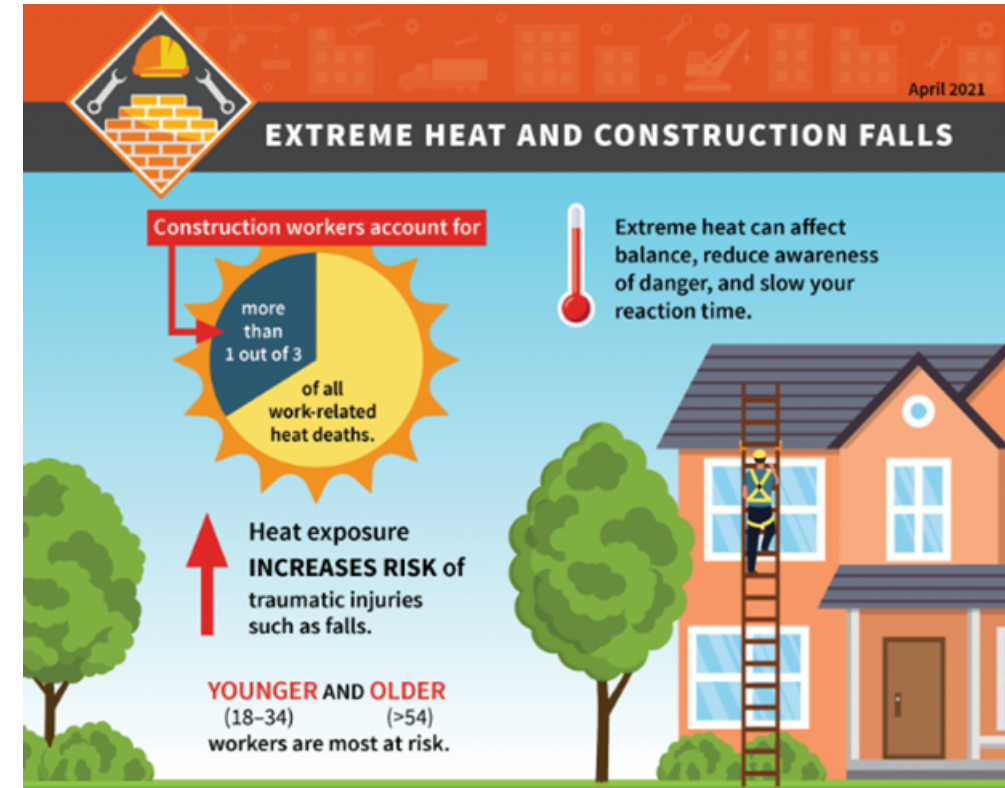
Risk Factors



- ◆ Physical condition
- ◆ Age
- ◆ Degree of Acclimatization
- ◆ Water Consumption
- ◆ Food Selection
- ◆ Prescription Medications
- ◆ Alcohol & Drug Abuse
- ◆ Work Environment

NIOSH Recommendations

- ◆ Issued Criteria for a Recommended Standard Occupational Exposure to Heat and Hot Environments in 2016
- ◆ Engineering controls: heat-absorbing shielding
- ◆ Training: Toolbox Talks
- ◆ Acclimatization: gradual increase in exposure to hot conditions over 7 to 14 days
- ◆ Hydration: 1 cup of water every 15-20 minutes
- ◆ Rest Breaks: increase frequency as temperature and humidity rise





Oregon Heat Illness Standard

- ◆ June 15 effective date
- ◆ Following is required in indoor and outdoor environments when heat index is 80 degrees Fahrenheit or above:
 - ◆ Access to shade
 - ◆ Drinking water readily available
- ◆ High-heat practices if heat index is 90 degrees Fahrenheit or above
 - ◆ Observation/monitoring
 - ◆ Emergency response procedures
 - ◆ Long rest breaks

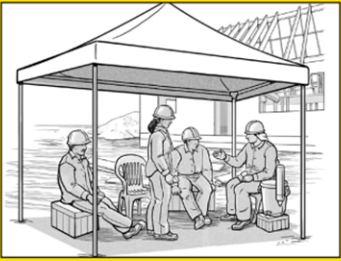


California Heat Illness Standard

 **Heat illness can be prevented!**
At our work site, we have:




Water



Shade to rest and cool down

We are extra careful when there is a heat wave or temperature goes up. Then we may change our work hours, and we all need more water and rest.



Training and emergency plan

4

- ◆ Only applies to outdoor worksites
- ◆ Requires employers to do the following:
 - ◇ Observation/monitoring
 - ◇ Emergency response procedures
 - ◇ Acclimatization
 - ◇ Training
 - ◇ Written heat illness prevention plan
- ◆ When temps reach 80 degrees, mandatory access to shade
- ◆ When temps reach 95 degrees, high heat procedures must be utilized

National Emphasis Program- April 8, 2022



- ◆ Targets over 70 high risk industries, including construction
- ◆ CSHOs will inquire about protocols for heat priority days
 - ◇ Heat priority days are when the heat index is expected to be 80° or higher
- ◆ OSHA will conduct preplanned inspections of high-risk industries
 - ◇ When National Weather Service has announced a heat warning or advisory for the local area
- ◆ OSHA will inspect alleged heat-related incidents regardless of industry's risk level

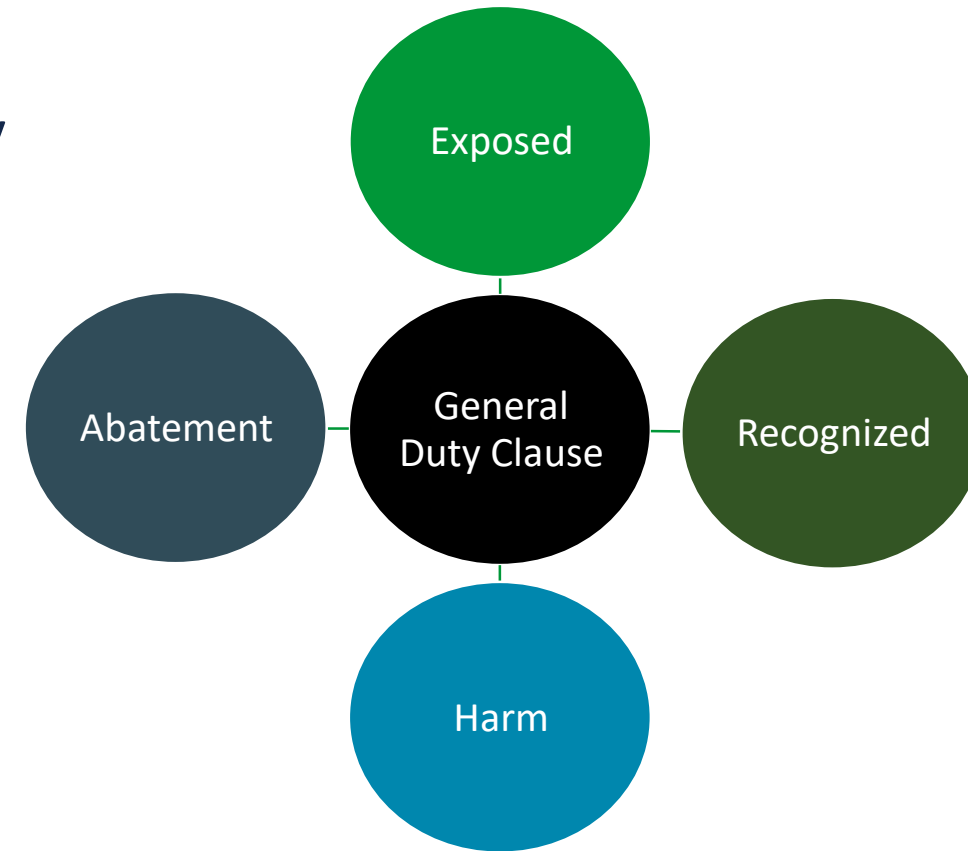
OSHA Rulemaking Process

- ◆ Goal is to develop a specific standard for heat-related injury and illness prevention
- ◆ Stakeholder Meeting on OSHA Initiatives to Protect Workers from Heat-Related Hazards (May 3)
- ◆ Agency stated no decisions made on content or timing for proposed rule
- ◆ Heat Injury and Illness Prevention Work Group of the National Advisory Committee on Occupational Safety and Health (NACOSH)
- ◆ Difficulty in setting a standard here is the various factors at play in determining the proper course of heat illness prevention



OSHA General Duty Clause

- ◆ OSHA historically has cited employers for heat stress related incidents under the General Duty Clause
- ◆ OSHA always has the burden of proof
- ◆ *Secretary v. A.H. Sturgill Roofing, Inc. (Sturgill)*
 - ◆ New temporary employee collapsed at job site; died 3 weeks later from heat stroke complications
 - ◆ OSHA Issued 2 citations, one under the GDC, one under Construction Standard “safety and training provision”
 - ◆ ALJ affirmed; RC reversed



Can you describe the core elements of McLean's Heat Illness Prevention Program?

McLean's Program

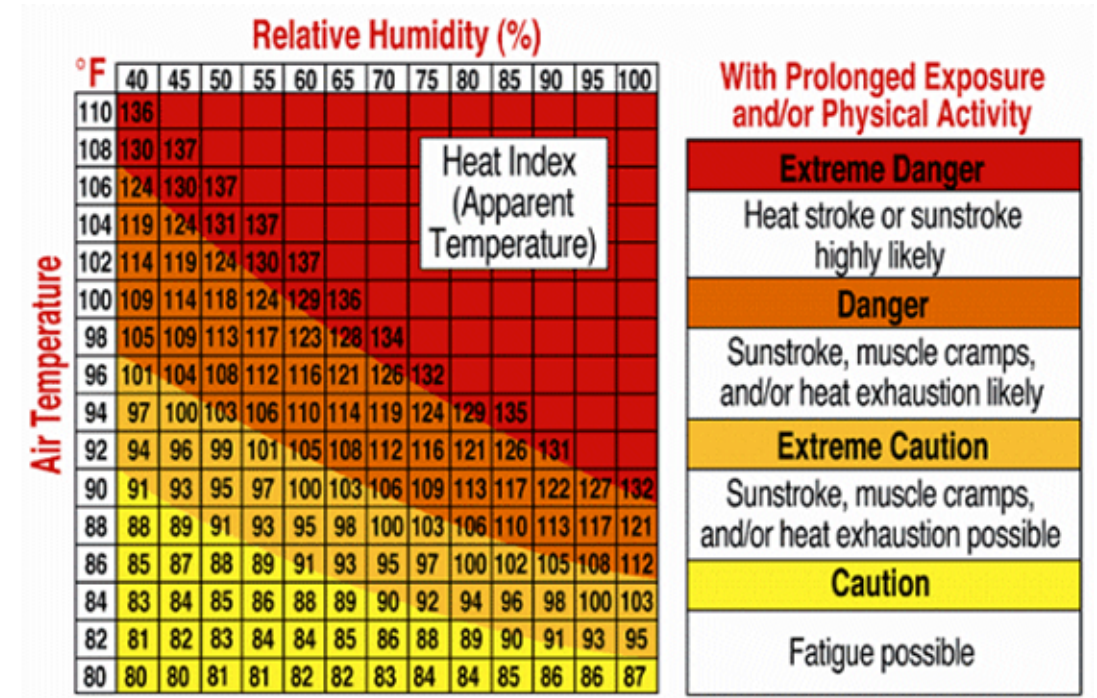
- ◇ Access to Water
- ◇ Access to Shade
- ◇ Weather Monitoring and Acclimatization
- ◇ High Heat Procedures
- ◇ Emergency Response Procedures
- ◇ Training



McLean's Program



- ◆ May 1st through October 31st
- ◆ Training once a year
- ◆ Buddy system
- ◆ Acclimatization
- ◆ What work is being performed?
- ◆ Shifting of start times
- ◆ Alerting Jobs



**What method do you use to detect
the heat levels?**

McLean's Program

- ◆ Heat Index Levels
- ◆ How we determine real feel
- ◆ Available cooling products
- ◆ What we do if someone is experiencing a heat related illness
- ◆ What do you do after the employee has experienced a heat related illness



**Are there any other steps McLean
takes to mitigate the impacts of heat
illness?**

McLean's Program

- ◆ Environmental Considerations
- ◆ Work Scheduling / Planning
 - ◇ Shifting start times
 - ◇ Adding of shifts
- ◆ Shielding of Employees
- ◆ Training





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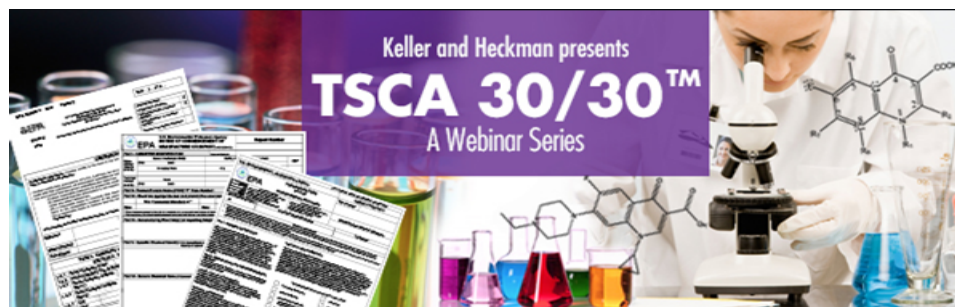
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Stick around for Off the Record

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