



**Sherman & Howard**

**OSHA LEGAL UPDATE**

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# Heat Stress

- ▼ Weather-related matters typically are regulated under the General Duty Clause.
- ▼ In September, OSHA released a “Heat Initiative.”
  - ❖ On “heat priority days” (those where the heat index exceeds 80 degrees) OSHA will inspect for heat hazards.
    - CSHOs will interview employees for symptoms;
    - CSHOs will look at employer policies related to heat (rest schedules, acclimatization, etc.);
    - CSHOs will identify job tasks that pose hazards.

# Heat Stress

- ▼ *Secretary of Labor v. A.H. Sturgill Roofing*, No. 13-0224 (Rev. Comm. Feb. 28, 2019)
  - ❖ Case involving a worker who collapsed from heat exhaustion.
  - ❖ OSHA cited a violation of the general duty clause.
  - ❖ The Review Commission reversed: OSHA could not establish a “recognized hazard” because it erroneously relied on misapplied and misinterpreted NWS information.

# Heat Stress

- ▼ In its Notice of Proposed Rulemaking, OSHA requested comments on certain topics, including:
  - ❖ Are there industries, occupations, or job tasks that should be considered when evaluating the health and safety impacts of hazardous heat exposure in indoor and outdoor work environments? Please provide examples and data.
  - ❖ Are there any industries, occupations, or job tasks that are facing changes in the rate or frequency of occupational heat-related illness? Please provide examples and data.

# Heat Stress

What might a standard look like?

- ❖ Requirement for suitable amounts of cold water onsite;
- ❖ Requirement for periodic shade breaks;
- ❖ Mandated training on the signs of heat stress.

# Heat Stress

## ▼ State Plan States

- ❖ CA: Requires shade breaks and available amounts of water onsite for outdoor work over 80 degrees.
- ❖ MN: Applies protections to indoor and outdoor work.
- ❖ WA: Requires written heat program for outdoor work.

# Heat Stress

## ▼ National Emphasis Program for Heat (April 8, 2022)

- ❖ CSHOs are to look for heat hazard during inspections;
- ❖ Will look for heat programs where heat index above 80 degrees;
- ❖ Programmed inspections on days where heat warnings are in effect;
- ❖ CSHOs will ask:
  - Is there a written program?
  - How did the employer monitor ambient temperature(s) and levels of work exertion at the worksite?
  - Was there unlimited cool water that was easily accessible to the employees?
  - Did the employer require additional breaks for hydration?
  - Were there scheduled rest breaks?
  - Was there access to a shaded area?
  - Did the employer provide time for acclimatization of new and returning workers?
  - Was a “buddy” system in place on hot days?
  - Were administrative controls used (earlier start times, and employee/job rotation) to limit heat exposures?
  - Did the employer provide training on heat illness signs, how to report signs and symptoms, first aid, how to contact emergency personnel, prevention, and the importance of hydration?

# Status of the Vaccine Mandate

- ▼ As we know, the Supreme Court has invalidated the *Emergency Temporary Standard* mandating vaccines or testing for large employers.
- ▼ A permanent standard is still in the works, though OSHA is prioritizing a permanent standard for healthcare workers.
- ▼ Only time will tell.



# Enforcement Data

OSHA Inspection Statistics	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020 <sup>*</sup>	FY 2021 <sup>*</sup>
Total Inspections	31,948	32,408	32,023	33,393	21,710	24,333
Total Programmed Inspections	12,731	14,377	13,956	14,900	8,729	10,584
Total Unprogrammed Inspections	19,217	18,031	18,067	18,493	12,981	13,749
~ Fatality/Catastrophe Inspections	890	837	941	919	1,498	1,386
~ Complaints Inspection	8,870	8,249	7,489	7,391	4,592	4,955
~ Referrals*	6,691	6,286	6,463	6,718	4,810	5,310
~ Other Unprogrammed Inspections	2,766	2,659	3,174	3,465	2,081	2,098

<sup>\*</sup>The COVID-19 global pandemic caused by the novel coronavirus SARS-CoV-2 occurred during this time.

# Top Ten Most Cited Standards

1. **Fall Protection, construction** (29 CFR 1926.501) [related safety resources]
2. **Respiratory Protection, general industry** (29 CFR 1910.134) [related safety resources]
3. **Ladders, construction** (29 CFR 1926.1053) [related safety resources]
4. **Hazard Communication, general industry** (29 CFR 1910.1200) [related safety resources]
5. **Scaffolding, construction** (29 CFR 1926.451) [related safety resources]
6. **Fall Protection Training, construction** (29 CFR 1926.503) [related safety resource]
7. **Control of Hazardous Energy (lockout/tagout), general industry** (29 CFR 1910.147) [related safety resources]
8. **Eye and Face Protection, construction** (29 CFR 1926.102) [related safety resources]
9. **Powered Industrial Trucks, general industry** (29 CFR 1910.178) [related safety resources]
10. **Machinery and Machine Guarding, general industry** (29 CFR 1910.212) [related safety resources]

# Common Construction Citations

## ▼ Silica!

❖ OSHA is nit-picking Table 1 Compliance.

## ▼ “Frequent and regular inspections” under 1926.20(b)(2)

# Penalty Adjustment

▼ Maximum fines have increased for inflation:

- ❖ \$15,625 maximum for Serious/OTS
- ❖ \$156,259 maximum for Willful/Repeat



Questions?

Sherman & Howard

# THANK YOU FOR ATTENDING



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