

Commissioner Devki Virk  
Division of Labor and Industry  
Maryland Department of Labor  
10946 Golden West Drive, Suite 160  
Hunt Valley, MD 21031

March 8, 2024

*Submitted via email to [dli.regulations+heat@maryland.gov](mailto:dli.regulations+heat@maryland.gov).*

Dear Commissioner Virk:

On behalf of the Natural Resources Defense Council (NRDC), I am pleased to comment on the Division of Labor and Industry's January 2024 draft heat stress standard. As I testified at the virtual hearing on January 31, the new draft is a major improvement on the original proposal from late 2022.<sup>1</sup> The current language demonstrates the Division's commitment to increase productivity, reduce missed workdays and expensive medical visits, and prevent needless workplace deaths related to extreme heat.

NRDC particularly appreciates how the new draft standard has a lower temperature trigger, includes high heat procedures, and will require employers to develop written heat illness prevention and management plans. Now, the Division should build even further on these improvements to ensure Maryland workers have the full suite of heat protections they need and deserve.

These additional commonsense measures, which include paid cooldown periods, regular evaluation of heat illness prevention plans, and meaningful input from workers, are considered in more detail below.

### **Formal heat hazard assessments**

Even indoor workplaces with mechanical cooling systems can get dangerously hot for workers engaged in moderate to strenuous activity, as we have seen across the country in workplaces such as warehouses, schools, and restaurants.<sup>2,3,4</sup> Without formal assessments of the hazards and the appropriate hierarchy of controls, employers, employees, and inspectors will be unable to fully address the scope and scale of the problem.

---

<sup>1</sup> These comments build on NRDC's remarks at the Division's virtual hearing on January 31, 2024. You can also view our comments on the 2022 draft at: <https://www.nrdc.org/sites/default/files/2023-06/nrdc-maryland-workplace-heat-standard-comments-2022-11-07.pdf>.

<sup>2</sup> E.g., Adiel Kaplan, "Big, Hot Steel Boxes: Warehouses are Booming as Summers Heat Up and Safety Rules Lag," August 6, 2023, *NBC News*, <https://www.nbcnews.com/investigations/warehouse-workers-extreme-heat-illness-osharcna95936>.

<sup>3</sup> E.g., David Sherfinski, "US Teachers Demand Relief From Classroom Extreme Heat," October 24, 2023, *Context*, <https://www.context.news/rethinking-the-economy/us-teachers-demand-relief-from-classroom-extreme-heat>

<sup>4</sup> E.g., Worksafe and SEIU, "*¡Aguántate!*" *Heat, Hazards and Indifference to Safety in California's Fast Food Restaurants*, September 2023, <https://worksafe.org/heat-hazards-report-landing-page.html>.

## **Paid cooldown periods**

The standard should treat cooldown periods as paid duty time unless they coincide with previously scheduled unpaid meal breaks. Otherwise, workers may skip breaks during high heat periods, putting themselves at unnecessary risk for the sake of their paychecks. Oregon’s Heat Illness Prevention standard provides a useful model of how to structure paid cooldown periods.<sup>5,6</sup>

Furthermore, shade or other cooldown areas should be arranged to allow all employees to sit in normal posture, not just to stand. Oregon, Washington, and California all require shaded areas to be large enough to accommodate employees sitting in normal posture.<sup>7,8,9</sup>

## **Clearer acclimatization requirements**

The requirements in the draft standard for regular/close observation of employees in Section C.04A need clarification.

First, it is not clear from the text what would entail “regular” or “close” observation. The Division should include additional guidelines and, ideally, require employers to include their observation protocols in their written acclimatization plans. For instance, the Washington heat standard requires employers to use regular communication by radio or cell phone, a mandatory buddy system, or “other effective means of communication.”

Second, the heat wave requirement in Section C.04A(1)(b) seems unnecessary, especially since the term “heat wave” is used nowhere else in the standard. Newly assigned and returning employees should be monitored when the heat index is 80 degrees, as described. Others should be monitored under high heat conditions, as described Section C.07.

## **Regular evaluation of heat plans**

No heat illness prevention and management plan will be perfect the first time around, and Maryland’s climate is only getting hotter.<sup>10</sup> Employers should be required to regularly evaluate and improve their written plans, including whenever a serious heat-related illness or injury occurs.

---

<sup>5</sup> Oregon OSHA, “Frequently Asked Questions (FAQs): Heat Illness Prevention (OARs 437-002-0156 and 437-004-1131),” n.d., <https://osha.oregon.gov/OSHAPubs/5866.pdf> (accessed December 14, 2023).

<sup>6</sup> Oregon OSHA, General Environmental Controls, Subdivision J, 437-002-0156 Heat Illness Prevention, <https://osha.oregon.gov/OSHARules/div2/div2J.pdf>.

<sup>7</sup> Ibid.

<sup>8</sup> Washington State Department of Labor & Industries, Outdoor Ambient Heat Exposure: Chapter 296-62 WAC, General occupational health standards; Chapter 296-307 WAC, Safety standards for agriculture (Outdoor Heat Exposure: WAC 296-62-095 through 296-62-09560; WAC 296-307-097 through 296-307-09760), <https://www.lni.wa.gov/rulemaking-activity/AO21-33/2133Adoption.pdf>.

<sup>9</sup> California Department of Industrial Relations, §3395. Heat Illness Prevention in Outdoor Places of Employment, <https://www.dir.ca.gov/title8/3395.html>.

<sup>10</sup> Jennifer Runkle et al., “Maryland and the District of Columbia State Climate Summary 2022,” 2022, NOAA Technical Report NESDIS 150-MD, <https://statesummaries.ncics.org/chapter/md/> (accessed February 2, 2024).

### **Additional training elements**

In addition to the annual heat stress training, employees should receive short refreshers ahead of high heat periods. The training records also should include the names of the people who delivered the training, as is required in the Oregon heat standard, and the language(s) in which training was delivered. As with the overall heat plan, employers should be required to regularly evaluate training materials to ensure they are meeting their intended purpose.

### **Meaningful input from workers and their representatives**

The standard should direct employers to develop and implement their heat plans—including acclimatization and emergency response procedures—with the meaningful input of employees and their representatives. This kind of input is critical for building a culture of safety and trust and for ensuring that plans on paper are making sense in the real world.

The Division should also continue to improve its direct engagement with workers on how to structure and implement the heat standard. This includes holding additional virtual meetings outside of normal work hours to maximize participation by those who are unable to get time off during the day or to travel to an in-person meeting. The Division should also take care to enable translation support at the start of every public meeting. At the virtual hearing on January 31, the lead translator repeatedly asked for temporary host status to enable live translation but did not appear to get it—potentially excluding participants from the discussion who do not speak English very well.

Thank you for your commitment to keeping Maryland workers safe from the preventable harms of heat. These types of safeguards have been needed for a long time, but the need is only growing as our climate changes.<sup>11</sup> Maryland is already expected to be warmer than average this summer.<sup>12</sup> With that and the longstanding historical threat of heat to workers in mind, NRDC urges you to swiftly strengthen and finalize this critical heat standard without delay.

Respectfully,

Juanita Constible  
Senior Advocate, Heat Solutions  
Climate Adaptation Division, Environmental Health  
NATURAL RESOURCES DEFENSE COUNCIL

---

<sup>11</sup> “Table 1.2. Climate Change Is Already Affecting All US Regions and Will Continue to Have Impacts in the Near Term,” in USGCRP, *Fifth National Climate Assessment*, 2023, A. R. Crimmins et al., eds., U.S. Global Change Research Program, <https://nca2023.globalchange.gov/chapter/1#table-1-2>.

<sup>12</sup> National Weather Service, Three-Month Outlooks, Official Forecasts, Jun-Jul-Aug 2024, [https://www.cpc.ncep.noaa.gov/products/predictions/long\\_range/seasonal.php?lead=5](https://www.cpc.ncep.noaa.gov/products/predictions/long_range/seasonal.php?lead=5) (accessed February 2, 2024).