Submitted Electronically

January 14, 2025

The Honorable Douglas Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (Docket No. OSHA-2021-0009)

Assistant Secretary Parker:

On behalf of our more than 5,400 nonprofit and mission-driven aging services providers from across the continuum of aging services, including home health and hospice, LeadingAge is pleased to offer the following comments in response to the Occupational Safety and Health Administration's (OSHA) notice of proposed rulemaking titled Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings. We recognize and appreciate the importance of mitigating the risk of employees' exposure to high heat, but we have identified the following questions and concerns about the proposed rule, which we respectfully offer for your consideration.

General Comments

We believe any OSHA standard should reflect the range of employers that would be covered by it. Here OSHA has undertaken to propose a rule that applies the same requirements to all employers, in all industries and locations, but not all work settings are the same. Specifically, we note that aging services are provided to individuals in their homes. This is true for community-based providers, such as home health agencies, home care agencies and hospices, and for providers offering supported living spaces in congregate settings, such as nursing homes, assisted living facilities and continuing care retirement communities, all of which make it their mission to create, maintain and foster a supportive home-like environment for those they serve. From this perspective, we offer some specific comments and examples below relating to challenges that may arise when working to implement the proposed standard in the context of providing services in an individual's private living environment.

We also believe that aspects of the proposed regulatory framework are more prescriptive than necessary and recommend that OSHA consider more general requirements, granting greater flexibility and scalability to employers to design tailored programs and approaches to heat exposure. We understand that OSHA must strike a balance between regulatory language that provides flexibility to employers and language that clearly states what an employer must do to comply. Given the issues noted in the preceding paragraph, however, as well as the complexity of addressing heat exposure, we believe this standard should provide flexibility when possible, and we offer examples below where we believe flexibility is important.

Finally, we note that California, Colorado, Maryland, Minnesota, Oregon, and Washington have established standards that require certain measures to be taken to protect workers from heat injury and illness in the workplace. As the lengthy preamble to OSHA's proposed rule reflects, there are a variety of approaches that can be taken to identifying when and how the risks of heat exposure should be addressed, and we recommend that OSHA deem an employer's compliance with an applicable state standard to be sufficient, provided the state standard is substantially similar to the federal standard.

Section Specific Comments

§ 1910.148(a) Scope and Application

Among other exemptions, this section states that the overall standard does not apply to work activities for which there is no reasonable expectation of exposure at or above the initial heat trigger or to work activities performed in indoor work areas or vehicles where air-conditioning consistently keeps the ambient temperature below 80 °F.

We support the flexibility offered by these exemptions, which give employers the discretion and responsibility for determining what work activities are covered by the standard, which may vary according to the specific areas in which work activities are performed. Regulation of heat exposure should reflect the diversity of indoor places of employment, and these exemptions are an example of OSHA's doing so with its proposal. We understand that, although some work activities may not be covered by the standard, others may be covered and that compliance would be expected for the latter.

§ 1910.148(c) Heat Injury and Illness Prevention Plan

This section requires employers to develop and implement a written work site heat injury and illness prevention plan (HIIPP) and specifies what the HIIPP must include.

We appreciate OHSA's making clear in the notice of proposed rulemaking that employers may have both employees who are exempt from the standard and employees who are be covered by it – depending on applicable work areas – and that these employers would be required to comply with the provisions of the standard for the covered employees. This flexibility allows employers to tailor their plans to their specific organizational activities.

We also support OSHA's position that an employer may develop a corporate level HIIPP that includes information about job tasks or exposure scenarios that apply at multiple work sites, which can be used in the development of HIIPPs for individual work sites.

Given the complexity of the regulatory language, and in order to reduce the administrative burden for employers, we urge OSHA to develop and make available model HIIPP templates, including examples that are specific to different industries and to indoor and outdoor work.

In its explanation of this section, the proposed rule also states that "when employees are in work areas not controlled by the employer **(like private residences)** employers would need policies and procedures for how they will ensure compliance with the standard" when employees enter such locations. We respectfully offer comments below about operational challenges that may arise under the proposed standard in the course of delivering home and community based services.

§1910.148(d) Identifying Heat Hazards

1) Outdoor Areas

We support that OSHA's proposal gives employers the option to monitor heat conditions by tracking local heat indexes provided by the National Weather Service, rather than having to take specific onsite measurements at each work area. This will provide needed flexibility for employers, including home and community based services providers, whose employees serve clients in multiple locations per day.

Concerning the frequency of outdoor monitoring, the proposed standard would require that an employer must monitor with sufficient frequency to determine with reasonable accuracy employee exposure to heat. Because heat index tools, such as those available through the OSHA-NIOSH Heat Safety Tool cell phone application, are available in a format that forecasts changes on an hourly basis throughout the day, we recommend that OSHA make clear that consulting such a forecast once, at the beginning of a work day or shift, would suffice for compliance purposes. We believe this would appropriately limit administrative burden while not compromising worker protection.

Under the proposed definitions at §1910.148(b), a vehicle would be considered a work area when an employee's work activities occur in the vehicle. The definition also specifies that vehicles operated outdoors are considered outdoor work areas for purposes of this standard unless exempted by §1910.148(a)(2) (air conditioned). On the assumption that OSHA intends for it to constitute a work activity when an employee is driving from one site of client service to another, we request confirmation that an employer would only be expected to monitor the heat index forecast and not conduct measurements within the vehicle itself.

2) Indoor Areas

Concerning indoor areas, proposed paragraphs (d)(3)(i)-(ii) state that employers would need to identify the specific work areas where they reasonably expect employees to be exposed to heat at or above the initial heat trigger, develop a monitoring plan that covers each such work area, and maintain records of such monitoring for six months. We have the following comments about this aspect of the standard:

- It is not clear how frequently such monitoring needs to occur. When the heat index in a given indoor work area is expected to be consistent over time – for example, a kitchen or laundry area within a climate controlled building – we believe that monitoring and recording should only be required periodically, such as on a monthly or weekly basis. This would reduce the administrative burden of taking and recording measurements without compromising safety.

- This requirement also raises practical questions concerning home and community based services, such as home health, home care, and hospice, delivered in a client's private residence. As one example, prior to visiting a new client for the first time, an employer would not know whether employees could reasonably be expected to experience heat above the initial trigger in that individual's home, meaning that implementation of control measures, if needed, should not be required prior to an opportunity for a site visit. Also, for individual employees providing services in private homes, we suggest that the standard should allow for monitoring of ambient temperature, so that simple and cost-effective thermometers could be used if one is not in place in such a residence.

§ 1910.148l Requirements at or Above the Initial Heat Trigger

1) Drinking Water

The proposed standard requires that the employer must provide access to drinking water that is: (i) placed in locations readily accessible to the employee; (ii) suitably cool; and (iii) of sufficient quantity to provide access to one quart of drinking water, per employee per hour.

- For employers with employees who work both outdoors and indoors, such as an employee of a congregate senior living community who conducts outdoor maintenance, we assume that an employer would be in compliance if the individual working outdoors accesses drinking water from the indoor space. We raise this issue for clarity, given the issue noted below concerning break areas.
- For mobile employees, such as individuals providing services to clients in private residences and traveling from site to site in a private vehicle, we are concerned that this requirement is impractical. For an individual working an 8-hour shift, the employer would be required to supply eight quarts of water, with a cooler to maintain temperature, which the employee may or may not wish to drink, depending on their personal needs and preferences. Another consideration might be workers traveling from one client site to another by public transit, which happens in larger cities and where it would be unrealistic for the individual to travel with eight quarts of water. OSHA should allow employers and employees flexibility to tailor this requirement to individual needs preferences.
- Finally, we assume and ask OSHA to clarify that where outdoor work is conducted by employees of a third-party contractor (such as for maintenance of the grounds of senior living community), the contractor holds responsibility for implementing the necessary control measures.

2) Break Areas

a) At outdoor work sites, the standard would require the employer to make a break area available, meaning either a shaded area or an enclosed air conditioned space. OSHA acknowledges that some employers may have facilities where both outdoor and indoor work occurs but, surprisingly, has not proposed to permit all employees in these facilities to utilize indoor break areas. In response to OSHA's request for comments on this issue, we strongly encourage allowing the use of indoor break areas. For an employee of a senior living community, for example, who works outdoors, it would be the natural course of action for the employee to go indoors when taking a needed rest break from the heat. More broadly, OSHA should confirm that, where employees are working both inside and outside of indoor facilities during their shift, such employers may address heat exposure under a single plan.

b) At indoor work sites, the standard requires an employer to provide an area for employees to take breaks that is air-conditioned or has increased air movement and, if appropriate, de-humidification.

For employers with fixed indoor work sites, we support OSHA's inclusion of both air conditioning and fans as engineering control options for complying with break area requirements. We also recommend that OSHA consider adding an "if feasible" condition to the engineering option of dehumidification, which may not be a simple fix in certain indoor spaces.

Turning again to the issue of mobile employees providing home and community based services in private residences, where the initial heat trigger is reached, we are concerned about the feasibility of the break area requirement, given that the individuals receiving services control their own living environments. Employers would not be in a position to create a break area for the employee that

complies with the standard in an individual's private home, and we ask OSHA to provide flexibility or a carve out in this situation. Please also see our related comments below concerning work area controls.

3) Work Area Controls

OSHA would also require employers to provide one of the following at each work area where the initial heat trigger may be reached: (i) Increased air movement, such as fans or comparable natural ventilation, and, if appropriate, de-humidification; (ii) air-conditioned work area; or (iii) In cases of radiant heat sources, other measures that effectively reduce employee exposure to radiant heat in the work area.

Concerning home and community based services, and as noted above, individuals who receive services in their private residences maintain control of their living environments. In some cases, an individual may unfortunately not have the ability to maintain their home at a temperature below the heat trigger. Others may be able to do so but may prefer to keep the temperature higher, such as during colder months, either as a matter of personal preference or for health-related reasons.

Simply put: employers may face significant barriers in terms of asking or requiring clients to adjust their home temperature or to implement cooling controls, and not all mobile employees may have access to air conditioning within their personal vehicle or to a nearby, public air conditioned space. A similar issue could arise in fixed indoor worksites, such as congregate living communities. Nursing homes, for example, may have air conditioning in common areas of the facility but not in individual resident rooms. Or, where resident rooms are air conditioned, some residents may prefer to keep their living space at a warmer temperature. We believe the standard should provide for an exception from the engineering control requirements in these situations.

4) The standard also requires employers to maintain a means of effective, two-way communication with employees and regularly communicate with employees, for both outdoor and indoor work. Regardless of approach, whether the employer reaches out proactively or establishes a system for employees to check in, OSHA states that it would be the employer's responsibility to ensure that regular communication is maintained with employees every few hours.

We are concerned that OSHA's intent that communication must occur (and presumably be documented) multiple times per shift is overly prescriptive, as one's work experience in terms of heat exposure, especially in indoor work, is often consistent and predictable from day to day. Further, not every employee reacts to heat in the same way. For these reasons, we recommend that OSHA generalize the requirement, rather than requiring a specific frequency of communication, and allow employers and employees to tailor a system that works best for their organization.

<u>§ 1910.148(f) Requirements at or Above the High Heat Trigger</u>

1) Breaks

Under the proposed standard, an employer must provide employees with a minimum 15-minute paid rest break, at least every two hours, in the break area required by paragraph (e). Compliance with this requirement will be challenging in many home health, home care and hospice situations. Depending on the needs of the individuals receiving care, mandatory breaks may interrupt or otherwise affect the ability of employees providing home and community based services in private residences to complete delivery of needed services – and sending additional staff to cover these breaks will often not be feasible, due to cost, workforce availability, or travel distances, especially in rural areas.

OSHA acknowledges that there are uncertainties in determining a precise rest break frequency and duration but has determined that a minimum of a 15-minute rest break every two hours would be protective in many circumstances at or above the high heat trigger, and that alternative approaches such as adjusting rest break frequency and duration based on weather conditions, work intensity, or protective clothing are likely to be difficult for many employers to implement.

Taking into account operational considerations such as scheduling and workforce challenges, and noting that section 1910.148(e) would allow employees to initiate unscheduled heat-related breaks when needed, we encourage OSHA to allow flexibility by including the alternative approaches referenced above as options that an employer may include in its HIIPP, which would be developed with the input and involvement of non-managerial workers per the requirement at section 1910.148(c).

2) Monitoring for Signs and Symptoms

Under the proposed standard, an employer must implement at least one of the following methods of observing employees for signs and symptoms of heat-related illness: (i) A mandatory buddy system in which co-workers observe each other; or (ii) observation by a supervisor or heat safety coordinator, with no more than 20 employees observed per supervisor or heat safety coordinator. (iii) For employees who are alone at a work site, the proposal states the employer must maintain a means of effective, two-way communication with those employees (e.g., by electronic means (such as a handheld transceiver, phone, or radio)) and make contact with the employees at least every two hours.

This requirement ties into the separate requirement that an employer must take certain actions if an employee is experiencing signs and symptoms of a heat-related illness or emergency, meaning OSHA can cite the employer if it does not correctly identify such employees. While we appreciate the importance of early identification of heat-related distress, this specific requirement raises practical operational challenges that should be addressed.

- Regarding options (i) and (ii), an issue employers will face – whether relying on coworker or supervisor observations – is that many indicators of heat illness are not outwardly visible to an observer, such as headache, dizziness, nausea, weakness, thirst and elevated body temperature. Other factors, such as sweating, may be visible but could be overlooked as a normal physical reaction of an employee working outdoors, for example.

- It is unclear how OSHA determined that proactively contacting a mobile employee – such as an individual providing home and community based services – every two hours is the appropriate interval during high heat scenarios. We are also unsure if the option for mobile employees includes "observation," such as through a video application, or if a phone call would suffice.

One approach to these issues would be to tie required actions by employers to circumstances where employees self-report signs or symptoms of heat illness, which we can expect to occur given the required training requirements that will support employees' ability recognize and report.

- Also, while individual risk factors are significant contributors to the level of hazard presented by heat, employers are limited in their ability to collect information or inquire about these matters.

If OSHA moves forward with a final rule, we recommend that the agency consult with the Equal Employment Opportunity Commission about providing employers the ability to make inquiries that might otherwise violate the Americans with Disabilities Act or the Age Discrimination in Employment Act. In other words, OSHA should consider the implications the standard would have on existing laws, to ensure employers are not put in a situation in which they cannot comply with all applicable rules.

Conclusion

LeadingAge appreciates the opportunity to provide these comments and welcomes the opportunity to continue to engage with OSHA as it considers this important issue. Thank you for your consideration, and please contact me (jlips@leadingage.org) if we can answer any questions or provide additional information.

Sincerely,

Jonathan Lips

Jonathan Lips, Vice President Legal Affairs

***About LeadingAge**: We represent more than 5,400 nonprofit and mission-driven aging services providers and other organizations that touch millions of lives every day. Alongside our members and thirty-six partners in forty-one states, we use applied research, advocacy, education, and community-building to make America a better place to grow old. Our membership encompasses the continuum of services for people as they age, including those with disabilities. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home.*