JUNE 2024 | VOLUME 9 | ISSUE 6

WORKPLACE SAFETY

# Indoor Heat Illness Rules Coming Soon

THE CAL/OSHA Standards Board has voted to approve new heat illness prevention regulations that will require some workplaces to make significant adjustments to their operations in order to comply, possibly starting early this summer.

The vote has been challenged, and at the last minute the California Department of Finance withdrew its approval of the regulatory changes due to a lack of full analysis on their potential financial impact on state entities, particularly state-operated correctional facilities.

However, Cal/OSHA is already in the process of creating a carveout for these entities to appease the Finance Department.

The indoor heat illness prevention standard applies to most indoor workplaces where the temperatures reach at least 82 degrees. According to Cal/OSHA, that includes facilites like warehouses, manufacturing and production facilities, greenhouses, wholesale and retail distribution centers, restaurant kitchens and dry cleaners.

## The rules

Applicable employers will need to create and maintain a written indoor heat illness prevention plan that includes the following:

**82-degree trigger** – When temperatures indoors reach this level, employers must:

- Have and maintain one or more cool-down areas when employees are present, which must be kept at a temperature below 82 degrees.
- Allow and encourage staff to take preventive cool-down rests in a cool-down area when they feel the need. They should be monitored for signs of heat illness during rests.
- Provide drinking water near the areas employees are working.
- Observe all employees during heat waves when a workplace has no measures for controlling the effects of outdoor heat on indoor temperatures.

**87-degree trigger** – When the temperature exceeds 87 degrees, employers must measure the temperature and heat index, and identify all other environmental risk factors for heat illness. Firms must keep records of the temperature/heat index.

They must also implement control measures such as:

- Using air conditioners, swamp coolers, ventilation or other measures to reduce the air temperature (engineering controls);
- Adjusting work procedures, practices or schedules to minimize exposure to heat, such as changing shifts to start earlier and avoid the hottest parts of the day (administrative controls); or
- Using personal heat-protective equipment, such as water- or air-cooled garments or heat-reflective clothing.

Employers with affected workplaces must also observe new employees for 14 days when working under these conditions.

*See 'Employers' on page 2*

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FED-OSHA RULEMAKING

# New Rule Lets Non-Employees Join Inspections

A NEW DEPARTMENT of Labor rule change clarifies the rights of employees to appoint an outside representative to accompany OSHA officers during workplace inspections.

OSHA inspections usually occur after a workplace has had a safety-related incident or a whistleblower has reported suspected safety violations. Attorneys representing employers say the new rule, which took effect May 31, could be problematic for businesses trying to keep inspections free of disruptions.

Advocates for employers worry that external observers may use their new ability to collect information that can be used to convince employees to join a union.

They also see a potential for other adversaries to join the inspections in search of employer failures. These might include disgruntled former employees, plaintiffs' attorneys, potential expert witnesses or injured workers' family members.

OSHA stressed that the final decision as to whether to permit a third party representative to join the inspection is up to the OSHA compliance safety and health officer that conducts the inspection. Either the employer or workers may appeal to the CSHO to reject a representative, but the CSHO decides.

In its response to public comments, OSHA emphasized the importance of employee representation to gathering necessary information about worksite conditions and hazards.

It also noted that the rule does not limit third party representatives to union representatives; third parties' ability to participate will be based on their knowledge, skills or experience.

"Third party representatives' sole purpose onsite is to aid OSHA's inspection," it wrote, "and CSHOs have authority to deny the right of accompaniment to third parties who do not do that or who interfere with a fair and orderly inspection."

Supporters of the rule argued that third parties may:

- Have important technical or subject matter expertise.
- Have language skills and cultural knowledge.
- Increase employees' trust in the inspections.
- Improve inspections of multi-employer worksites, such as construction sites.
- Balance the rights of employers and employees.

## The takeaway

Employers may be more likely to face litigation and a difficult discovery process after an accident under the new rule, legal pundits say.

Some observers recommend that employers stand ready to object to participation from plaintiffs' attorneys who may not have much workplace safety expertise but who know how to fish for clients.

It will be important that they evaluate the need for a particular third party to participate in the inspection.

Employer groups are expected to challenge the new rule in court. A court might issue an injunction preventing the rule's enforcement during litigation.

That is uncertain, however, so employers should be prepared now to permit third parties to join OSHA inspectors on their premises if workers request it. ❖

*Continued from page 1*

# *Employers Must Develop Emergency Response Procedures*

**Emergency response** – Employers must develop emergency response procedures, which must include:

- An effective communication system to allow workers to contact a supervisor or emergency services.
- Steps for responding to signs and symptoms of heat illness, including first aid and providing emergency medical services.
- Emergency response procedures for severe heat illness.
- Monitoring employees exhibiting signs of heat illness, and not leaving them alone without offering them on-site first aid or medical services.

**Training** – Employees and supervisors will need to be trained on:

- Personal risk factors for heat illness.
- Their employer's procedures for complying with the regulations.
- The importance of frequent water consumption.

## The takeaway

As mentioned, at this point there is no definitive date for these regulations taking effect, but Cal/OSHA insists they will be ready before summer starts in late June. ❖

COMPLIANCE ALERT

# Workplace Violence Prevention Law Takes Effect July 1

CALIFORNIA EMPLOYERS must start complying with the state's new workplace violence prevention law starting July 1.

With that less than a month away, employers will be required to adopt and implement workplace violence prevention plans that satisfy the requirements of California Labor Code. All employers in the state are required to comply with the new law, with only a few exceptions.

## What the Plan Must Include

- Identifies who is responsible for implementing the plan.
- Involves employees and their representatives in its creation.
- Includes details for how to accept and respond to reports of workplace violence.
- Prohibits employee retaliation.
- Includes details for communicating with employees regarding workplace violence matters, including: how to report a violent incident, threat or other workplace violence concern; effective means to alert employees to the presence of a workplace violence emergency; and how to obtain help from staff assigned to respond and/or law enforcement.
- Lays out instructions for responding to actual and potential emergencies.
- Includes procedures for post-incident response and investigation.
- Requires the employer to develop and provide effective training. Employees must be provided with initial training and then an annual refresher.
- Requires the employer to identify, evaluate and correct workplace violence hazards.
- Requires the employer to post incident response and investigations.

### Training

Employers will be required to train their workers on workplace violence prevention with training materials that are easy to understand. Training must include:

- Familiarizing employees with the plan and how to participate in developing and implementing the plan.
- Definitions and requirements of California Labor Code section 6401.9.
- Information on how to report workplace violence incidents without fear of retaliation.
- Job-specific violence hazards and preventive measures.
- Explaining the purpose of the violent incident log and how to obtain related records.
- The opportunity for employees to ask questions and get more information on their employer's plan.

### Recording keeping

Employers will be required to keep records of:

- Workplace violence hazard identification, evaluations, and any corrections made (must be maintained at least five years).
- Training (kept for one year).
- Violent incidents (kept for at least five years).
- Workplace violence incident investigations (kept for at least five years). ❖

**WANT TO KNOW MORE?**
**Watch this webinar recording with Acrisure and Secured Environment Consultants:**

**IMPLEMENTATION HELP**
**Check out Secured Environment Consultant's workplace violence prevention services and toolkit.**

CYBERATTACK STUDY

# Business E-Mail Compromise Scams Top Threat

BUSINESS E-MAIL compromise scams are now the most common type of cyberattack businesses face, and all types of these attacks are showing no signs of letting up, according to a new report.

Nearly three out of every four businesses were targets of these attacks and 29% of those firms became victims of successful attacks, according to the report by Arctic Wolf, a cyber-security firm.

While this has become the most common type of attack, a number of other schemes like ransomware attacks and data breaches continue growing in number.

Any of these attacks can drain a company's finances and result in tricky legal and possibly reputational issues that take time and money time to resolve.

## The trends

The main threats businesses face, according to the report, are:

**Business e-mail compromise (BEC)** – Seven in 10 organizations surveyed said they had been targeted by these types of scams.

Some examples of BEC attacks include impersonating company executives to request wire transfers, falsifying invoice payment details, and tricking employees into revealing sensitive information. These scams can result in significant financial losses for businesses.

**CAUTION:** For businesses that use cloud-based e-mail services like Office365, these attacks are hard to detect since they don't reside on company servers.

With many organizations moving to cloud-based e-mail services, these types of attacks can be difficult to identify with traditional security tools and may go undetected until they have successfully executed their objectives.

**Data breaches** – Nearly half (48%) of organizations surveyed reported that they'd found evidence of a breach in their systems. The authors said that does not mean that the other 52% didn't suffer a breach; it means they failed to find evidence of one.

**Ransomware** – Some 45% of organizations surveyed admitted to being the victim of a ransomware attack within the last 12 months. These attacks usually involve criminals gaining access to a company's systems by getting an employee to click on a malicious link, after which they lock down the system and demand a ransom to unlock it.

Increasingly, perpetrators are also stealing data and demanding a second ransom to give it back and not release the data to others.

## What you can do

### How to Protect Against BECs

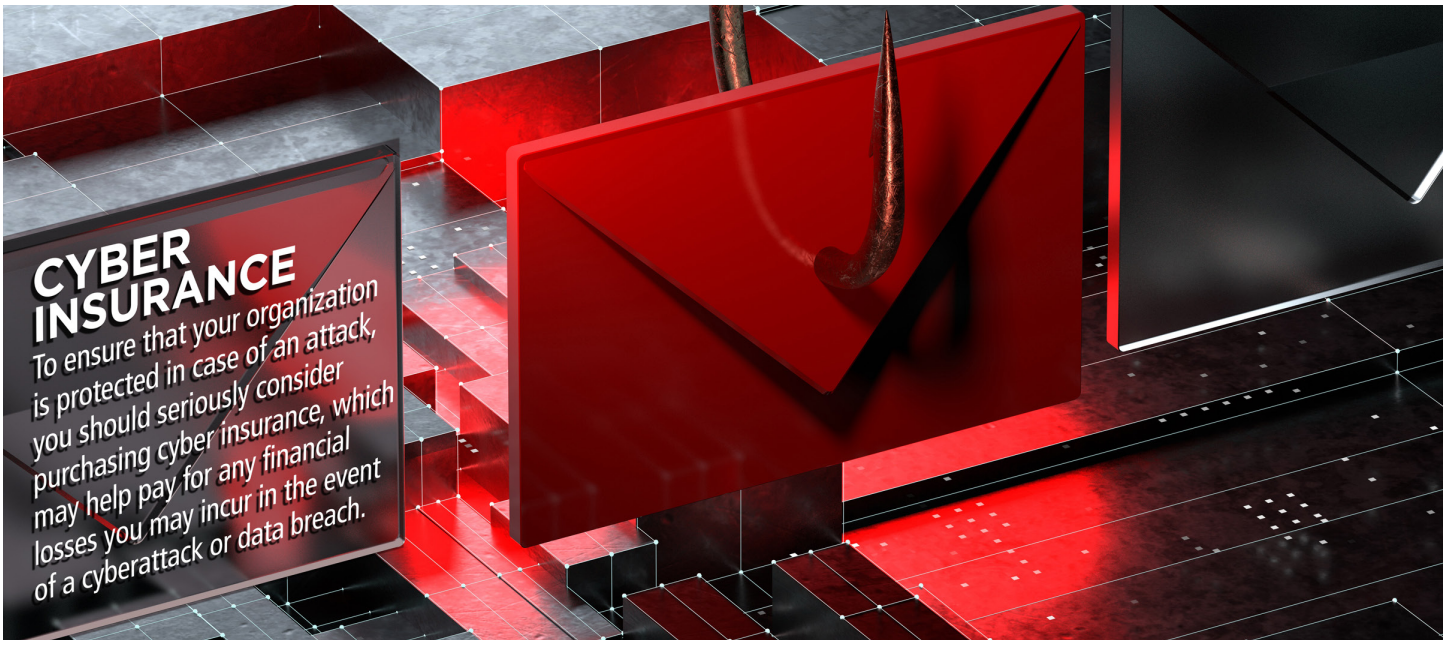
- Register all domain names that are similar to the business's legitimate website and can be used for spoofing attacks.
- Create rules that flag e-mails received from unknown domains.
- Monitor and/or restrict the creation of new e-mail rules on your servers.
- Enable multi-factor authentication.
- Conduct BEC drills, similar to anti-phishing exercises.
- Companies that use Office 365 or other cloud-based e-mail services, should employ detection tools or services specifically designed to monitor for threats related to BEC scams.

To combat ransomware:

**Regularly back up system.** Verify your backups regularly. This way you can restore functions if hit by ransomware.

**Store backups separately.** In particular, store backups on a separate device that cannot be accessed from a network, such as on an external hard drive.

**Training your staff.** Train your staff in how to spot possible phishing e-mails that are designed to convince an employee to click on a malicious link that will release the ransomware. ❖



WORKERS' COMPENSATION

# Electronics, Construction Class Code Changes

THE WORKERS' Compensation Insurance Rating Bureau of California will recommend changes to class codes for some electronics manufacturing sectors, as well as increases to the wage thresholds for construction industry dual classifications.

The move comes after the Rating Bureau's governing committee unanimously approved proposed changes, which will be sent in March to the state insurance commissioner for approval. If approved, the changes will take effect Sept. 1, 2024. Here's what's on tap:

## Dual-wage increases

The Rating Bureau will also recommend increasing the thresholds that separate high- and low-wage earners in 16 dual-wage construction classes as shown below.

These class codes have vastly different pure premium rates for workers above and below a certain threshold. Lower-wage workers have historically filed more workers' comp claims.

Rates for lower-wage workers are often double the rates for higher-wage workers.

## Electronics manufacturing

Another proposed change would link two more classes to the 8874 companion classification, which was created in September 2022 to cover certain low-risk classes in the electronics industry group.

Currently, 8874 is a companion class that covers payroll for lower-risk jobs in hardware and software design and development, computer-aided design, clerical and outside sales operations for two classes:

- 3681 (manufacturing operations for electronic instruments, computer peripherals, telecommunications equipment), and
- 4112 (integrated circuit and semiconductor wafer manufacturing).

The new proposal would move to 8874 similar low-risk white-collar personnel currently assigned to class 3572 (medical instrument manufacturing) and 3682 (non-electric instrument manufacturing).

The Bureau is also recommending merging class code 3070 (computer memory disk manufacturing) with 3681(2) (computer or computer peripheral equipment manufacturing).

If this recommendation is okayed, the higher pure premium rate of $0.46 per $100 of payroll for class code 3681 will apply to the new combined code.

Class 3070 currently has a pure premium rate of $0.25 per $100 of payroll and the new rate would be phased in at 25% per year until class 3070 is eliminated and all employers are moved to class 3681. ❖

## DUAL-CLASS CODE CHANGES COMING 9/1*

| Classification | | Current per hour threshold | Recommended threshold |
|---|---|---|---|
| **5027/5028** | Masonry | $32 | $35 |
| **5190/5140** | Electrical Wiring | $34 | $36 |
| **5183/5187** | Plumbing | $31 | $32 |
| **5185/5186** | Automatic Sprinkler Installation | $32 | $33 |
| **5201/5205** | Concrete or Cement Work | $32 | $33 |
| **5403/5432** | Carpentry | $39 | $41 |
| **5446/5447** | Wallboard Installation | $38 | $41 |
| **5467/5470** | Glaziers | $36 | $39 |
| **5474/5482** | Painting/Waterproofing | $31 | $32 |
| **5484/5485** | Plastering or Stucco Work | $36 | $38 |
| **5538/5542** | Sheet Metal Work | $29 | $33 |
| **5552/5553** | Roofing | $29 | $31 |
| **5632/5633** | Steel Framing | $39 | $41 |
| **6218/6220** | Excavation/ Grading/Land Leveling | $38 | $40 |
| **6307/6308** | Sewer Construction | $38 | $40 |
| **6315/6316** | Water/Gas Mains | $38 | $40 |

**Proposed*