



Legislative & Public Policy ADVISORY ■

OCTOBER 28, 2021

Take This Opportunity to Comment on OSHA's Advanced Rulemaking on Heat Injury and Illness Prevention

by [Kristi Boswell](#)

This week, the Occupational Safety and Health Administration (OSHA) published an advance notice of proposed rulemaking (ANPRM), [Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings](#), RIN 1218-AD3. In this pre-rule, OSHA takes the first step to obtain public input as it considers whether to undergo a more formal rulemaking. Citing the impact of climate change, vulnerability of the energy grid, and regional uncharacteristically hot temperatures, OSHA took this action in response to multiple public petitions in 2011, 2018, and 2021 and the urging from members of Congress asking the agency to establish a federal heat-illness standard.

In this ANPRM, OSHA seeks public input about information that it should consider in developing a federal heat-illness standard, asking for relevant data that the agency should consider if a future rulemaking is initiated and feedback on current measures targeted to prevent heat-related injuries. The agency discusses both indoor and outdoor work environments and specifically highlights jobs in agriculture, construction, transportation and warehousing, administrative and support, and waste management and remediation services as industries that experience the highest rates of heat-related mortality.

The agency acknowledges existing state-level regulatory and enforcement measures that currently target heat stress, questioning whether those current standards may contain elements that could be applied at the federal level. Additionally, the agency identifies various employer efforts to determine if industry standards and employer actions have been effective in reducing or preventing heat-related illness in the workplace.

At this time, OSHA has not developed a proposed rule and is not drafting proposed regulations. This pre-rule is only intended to gather data and information to aid the agency in deciding whether to move forward with formal rulemaking. Regardless, taking this step is a clear signal that the agency is intending to undergo a full rulemaking and will likely pursue a federal heat-illness standard. This is the time for employers to engage to help shape how a proposed standard may be drafted to ensure worker safety measures are reasonable and also reflect the realities of workplace demands.

OSHA is accepting comments for 60 days, until December 27, 2021. The team at Alston & Bird continues to engage and monitor this issue and is available to be a resource as needed.

This alert is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

You can subscribe to future *Legislative & Public Policy* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Kristi Boswell
202.239.3236
kristi.boswell@alston.com

Jane B. Lucas
202.239.3229
jane.lucas@alston.com

Theodore B. Schroeder
202.239.3447
ted.schroeder@alston.com

Carolyn E. Smith
202.239.3566
carolyn.smith@alston.com

Evan Collier
202.239.3133
evan.collier@alston.com

Hon. Earl Pomeroy
202.239.3835
earl.pomeroy@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2021

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86.10.85927500
 BRUSSELS: Rue Guimard 9 et Rue du Commerce 87 ■ 3rd Floor ■ 1000 Brussels ■ Brussels, 1000, BE ■ +32.2.550.3700 ■ Fax: +32.2.550.3719
 CHARLOTTE: One South at The Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 FORT WORTH: 3700 Hulen Street ■ Building 3 ■ Suite 150 ■ Fort Worth, Texas, USA, 76107 ■ 214.922.3400 ■ Fax: 214.922.3899
 LONDON: 5th Floor ■ Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
 RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
 SILICON VALLEY: 1950 University Avenue ■ Suite 430 ■ East Palo Alto, California, USA 94303 ■ 650.838.2000 ■ Fax: 650.838.2001
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333