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STATE OF NEVADA



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Administrator

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**DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS**

**NOTICE OF INTENT TO ACT
ON PROPOSED REGULATIONS**

**Notice of Hearing for the Adoption of Regulations
of the Division of Industrial Relations,
Department of Business and Industry
March 28, 2022 at 10:00 a.m.
Legislative Counsel Bureau ("LCB") File No. R053-20**

You are hereby given notice that the Division of Industrial Relations of the Department of Business and Industry, State of Nevada (Division) will conduct a public hearing on proposed permanent regulations amending Chapter 618 of the Nevada Administrative Code ("NAC") on Monday, March 28, 2022 at 10:00 a.m.

This meeting will be held *via* a Webex meeting only. Webex allows for video and teleconferencing. This public hearing will be held via remote technology system only (WebEx) in accordance with Assembly Bill 253 (Effective May 31, 2021).

Accordingly, any person planning to participate in the meeting must participate by using the Webex Access information immediately below.

Webex Access

<https://nvbusinessandindustry.webex.com/nvbusinessandindustry/j.php?MTID=m66cc3666176099603571d55047f77249>

Meeting number (access code): 2459 997 0254, Meeting password: FNuSaU2Py35

Join by phone

+1-415-655-0001 US Toll, Access code: 2459 997 0254

Need help? Go to <https://help.webex.com/>

Pursuant to NRS 233B.608 and 233B.609, the Division is providing the following statements pertaining to the public hearing on proposed changes to Chapter 618 of NAC.

The need and purpose of the proposed revisions to regulations: *The Division of Industrial Relations, Occupational Safety and Health Administration ("OSHA") may adopt regulations to mitigate heat illness in the workplace. The proposed regulations are necessary to mitigate occupational injuries and illnesses resulting from heat exposure in the workplace. From FY 2018*

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to FY 2021, there were an average of 73 workers' compensation claims per year in Nevada arising from heat issues. The number of heat stress complaints reported to Nevada OSHA has been rising over the past several years from a low of 74 complaints in 2016 to a high of 202 complaints in 2021. The industries with the highest number of complaints over this time period were accommodation and food services, retail trade, and manufacturing.

The estimated economic effect of the proposed regulations on (a) regulated businesses and (b) the public, including, stated separately: (i) adverse and beneficial effects; and (ii) immediate and long-term effects:

(a) Regulated businesses:

(i) Adverse and beneficial effects:

The Division anticipates a direct adverse financial effect on regulated businesses as the result of these regulations to mitigate heat illness on employees at the workplace. The Division anticipates that employers of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit may expend time for developing and including a program for the management of heat illness in their written safety program as required by NRS 618.383. Other adverse effects, if any, are difficult to determine at this time but may include, as each respective employers' written safety program may require, the costs of providing potable drinking water and, during daylight hours, shade or other cooling mechanisms at the workplace; and developing, implementing and training on heat illness and the employer's heat illness management program in its written safety program. There will be no indirect cost to regulated or small businesses.

The Division believes that there will be no direct beneficial effects on regulated or small businesses as the result of these regulations, but there may be indirect beneficial effects on reduced employee lost time from heat illness.

(ii) Immediate and long-term effects:

The Division does not anticipate any immediate effects, either adverse or beneficial, on regulated and small businesses as a result of these regulations mitigating heat illness in the workplace. The adverse effects, if any, are difficult to determine at this time; however, the Division anticipates that employers of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit may expend time for developing and including a program for the management of heat illness in their written safety program as required by NRS 618.383. Other adverse effects, if any, may include, as each respective employers' written safety program may require, the costs of providing potable drinking water and, during daylight hours, shade or other cooling mechanisms at the workplace; and developing, implementing and training on heat illness and the employer's heat illness management program in its written safety program.

The Division does not anticipate any long-term adverse effects on regulated and small businesses as a result of these regulations, but there may be long-term

beneficial effects on reduced employee lost time from heat illness. There will be no direct or indirect costs to regulated or small businesses.

(b) The public:

(i) Adverse and beneficial effects:

The Division anticipates no adverse effects, either direct or indirect, on the public as the result of these regulations mitigating heat illness on employees at the workplace. There will be no direct or indirect cost to the public.

The Division believes that there may be indirect beneficial effects to the public from a potential reduction in heat illness, which can lead to greater productivity and economic growth.

(ii) Immediate and long-term effects:

The Division does not anticipate any immediate effects, either adverse or beneficial, on the public as a result of these regulations mitigating heat illness on employees at the workplace. There will be no direct or indirect costs to the public.

The Division does not anticipate any long-term adverse effects on the public as a result of these regulations. There may be long-term beneficial effects to the public from a potential reduction in heat illness, which can lead to greater productivity and economic growth. There will be no direct or indirect costs to the public.

The estimated cost to the Division for enforcement of the proposed regulations: *The Division does not anticipate incurring any additional cost for these proposed permanent regulations mitigating heat illness on employees in the workplace.*

The Division believes that the proposed regulation does not overlap or duplicate any existing regulation. *The proposed regulation is not required by federal law and there is no equivalent federal law.*

The proposed regulation does not establish a new fee or increase an existing fee. *The proposed regulation does not provide for a new fee or increase an existing fee payable to the Division.*

The Division invites representatives of regulated businesses and the public to attend the public hearing and/or prepare written and/or oral comments concerning the proposed regulations. A copy of the proposed language for LCB File No. R053-20, may be downloaded at the Nevada Occupational Safety and Health Administration website: <http://dir.nv.gov/OSHA/Home>. Before the Public Hearing, persons may submit written comments to Christopher A. Eccles, Esq., Senior Division Counsel, Division of Industrial Relations, 3360 W. Sahara Avenue, Ste. 250, Las Vegas, Nevada 89102 or by email to ceccles@dir.nv.gov. If no person who is directly affected by the proposed regulation appears to make oral comments, the Division will proceed immediately to act upon any written submissions.

Persons with disabilities who require special accommodations or assistance at the public hearing must notify Rosalind Jenkins, at the Division of Industrial Relations, 3360 W. Sahara Ave., Ste. 250, Las Vegas, Nevada 89102, or by calling (702) 486-9014 at least three (3) working days prior to the scheduled hearing date.

A copy of this notice and the proposed regulations are available at the Division's web page (<http://www.dir.nv.gov/Meetings/Meetings/>). This notice and the text of the proposed regulations are also in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Notice required by NRS 233B.064: Upon adoption of any regulation, the agency (the Division), if requested to do so by an interested person, either before adoption or thirty days thereafter, shall issue a concise statement or the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been posted on Nevada's notice website: <http://leg.state.nv.us/App/Notice/A/>; State of Nevada notice website: <https://notice.nv.gov>; and the Division's website: <http://dir.nv.gov/Meetings/Meetings>, as set forth in NRS 241.020(4)(b) and (4)(c). A copy of the Notice and the proposed permanent regulation to be adopted and/or amended is on file and has also been posted at the following locations: Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102; and 400 West King Street, Suite 400, Carson City, Nevada 89710.

**HEARING AGENDA
DIVISION OF INDUSTRIAL RELATIONS
DEPARTMENT OF BUSINESS AND INDUSTRY**

Notice: (1) Items on the Agenda may be taken out of order; (2) the Division may combine two or more Agenda items for consideration; and (3) the Division may remove an item on the Agenda at any time.

I. Call to Order.

II. Public Comment. The opportunity for public comment is reserved for any matter listed below on the Agenda as well as any matter within the jurisdiction of the Division. No action on such an item may be taken by the Division unless and until the matter has been noticed as an action item. Comment may not be restricted based on viewpoint.

III. Discussion of Proposed Permanent Regulations – LCB File No. R053-20, amendment of regulations that pertain to Chapter 618 of the Nevada Administrative Code.

IV. Public Comment. The opportunity for public comment is reserved for any matter within the jurisdiction of the Division. No action on such an item may be taken by the Division unless and until the matter has been noticed as an action item. Comment may not be restricted based on viewpoint.

V. Adjournment.

**REVISED ADOPTED REGULATION OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R053-20

March 18, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: §§ 1-9, NRS 618.295 and 618.315.

A REGULATION relating to occupational safety and health; imposing certain duties on employers of employees who are exposed to certain high temperatures; requiring an employer to provide employees with training relating to heat illness; imposing certain duties on an employer of an employee who shows signs or symptoms of heat illness; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain employers to establish a written safety program. (NRS 618.383) **Section 7** of this regulation: (1) requires an employer of employees who are exposed to certain high temperatures to include a program for the management of heat illness in the written safety program; (2) sets forth certain items which must be included in such a program for the management of heat illness; and (3) provides that if an employer is required to establish a safety committee, the employer must provide employees with an opportunity to comment on the program for the management of heat illness.

Section 8 of this regulation requires an employer to provide certain supervisory and nonsupervisory employees with training relating to heat illness.

Section 9 of this regulation imposes certain duties on an employer of an employee who shows signs or demonstrates symptoms of heat illness.

Section 1. Chapter 618 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. As used in sections 2 to 9, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 3. “Acclimatization” means the temporary adaptation of a person’s body to work in the heat that occurs gradually when the person is exposed to the heat.

Sec. 4. “Heat illness” means a medical condition resulting from the body’s inability to cope with a particular heat load and includes, without limitation, heat cramps, heat rash, heat exhaustion, fainting and heat stroke.

Sec. 5. “Personal risk factors for heat illness” means factors that affect the retention of water by the body and other physiological responses to heat, including, without limitation, a person’s:

- 1. Age;*
- 2. Degree of acclimatization;*
- 3. Health;*
- 4. Consumption of water;*
- 5. Consumption of alcohol;*
- 6. Consumption of caffeine; and*
- 7. Use of prescription medications.*

Sec. 6. “Shade” means a blockage of direct sunlight.

Sec. 7. 1. An employer of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit shall include a program for the management of heat illness in the written safety program required by NRS 618.383.

2. A program for the management of heat illness required pursuant to subsection 1 must include:

(a) Provision for potable water, including how such water will be provided where water is not plumbed or otherwise continuously provided;

(b) Provision for rest breaks for employees who are exhibiting signs of heat illness;

(c) Provision, during daylight hours, for shade or other means of cooling which are at least as effective as shade;

(d) Monitoring of employees for heat illness;

(e) Monitoring the acclimatization of employees for not fewer than the first 14 days of their employment;

(f) Identification of work processes which may generate additional heat or humidity and procedures to mitigate those hazards;

(g) Training of employees and management; and

(h) Procedures for responding to an emergency.

3. If an employer is required to establish a safety committee pursuant to subsection 2 of NRS 618.383, the employer must provide employees with an opportunity to provide comment to the employer on the program for the management of heat illness required pursuant to subsection 1.

Sec. 8. 1. *An employer who, pursuant to section 7 of this regulation, is required to include a program for the management of heat illness in a written safety program shall provide training on the following topics to all supervisory and nonsupervisory employees who may be affected by issues relating to heat illness:*

- (a) Working conditions that create the possibility that heat illness could occur, including:
 - (1) Air temperature;*
 - (2) Relative humidity;*
 - (3) Radiant heat from the sun and other sources;*
 - (4) Conductive heat from the ground and other sources;*
 - (5) The movement of air;*
 - (6) The severity and duration of workloads; and*
 - (7) Protective clothing and personal protective equipment worn by an employee.**
- (b) The personal risk factors for heat illness.*
- (c) The importance of frequent consumption of small quantities of water or liquids for the replacement of electrolytes when the work environment is hot and an employee is likely to be sweating more than usual in the performance of his or her duties.*
- (d) The importance of acclimatization.*
- (e) The different types of heat illness and the common signs and symptoms of heat illness.*
- (f) The importance to an employee of immediately reporting to the employer, directly or through a supervisor for the employer, signs or symptoms of heat illness in the employee or in a coworker.*
- (g) The employer's procedures for:
 - (1) Responding to symptoms of possible heat illness, including how medical services will be provided should they become necessary;*
 - (2) Compliance with the requirements of paragraphs (a) and (b) of 29 C.F.R. § 1910.151, including procedures for contacting emergency medical services and, if necessary,**

transporting an employee to a location where the employee can be reached by a provider of emergency medical services; and

(3) Ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders.

2. Before assigning a supervisor to supervise employees working in the heat, an employer shall provide the supervisor with training on the following topics:

(a) The information which is required to be provided to the supervisor pursuant to subsection 1.

(b) The procedures which the supervisor is to follow:

(1) To implement the applicable provisions of subsection 1; and

(2) When an employee exhibits symptoms consistent with possible heat illness, including procedures for responding to an emergency.

Sec. 9. *If an employee shows signs of heat illness or demonstrates symptoms of heat illness, his or her employer must:*

1. Relieve the employee from duty;

2. Provide the employee with means to reduce his or her body temperature; and

3. Monitor the employee to determine whether medical attention is necessary.

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DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

AMENDED SMALL BUSINESS IMPACT STATEMENT

AS REQUIRED BY NRS 233B.0608 AND 233B.0609

LCB FILE NO. R053-20

March 23, 2022

Note: Small Business is defined as “a business conducted for profit which employs fewer than 150 full-time or part-time employees.” (NRS 233B.0382).

1. Describe the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

ANSWER: To determine whether the proposed regulations mitigating heat stress on employees at the workplace, the Division considered the purpose and scope of the proposed regulations. Based on this review, the Division determined that this regulation may have a small adverse direct effect on small businesses and no adverse indirect effect on small businesses. The possible direct adverse effect on small businesses may include instances where employers of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit may expend time for developing and including a program for the management of heat illness in their written safety program as required by NRS 618.383. Other adverse effects, if any, are difficult to determine at this time but may include, as each respective employers’ written safety program may require, the costs of providing potable drinking water and, during daylight hours, shade or other cooling mechanisms at the workplace; and developing, implementing and training on heat illness and the employer’s heat stress management program in its written safety program.

The Division believes that there will be no direct beneficial effects on small businesses as the result of these regulations, but there may be indirect beneficial effects on reduced employee lost time from heat illness.

2. The manner in which the analysis was conducted.

ANSWER: As noted in Answer 1, above, there may be a direct adverse financial effect on small businesses, which may include instances where employers of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit may expend time for developing and including a program for the management of heat illness in their written safety program as required by NRS 618.383. Other adverse effects, if any, are difficult to determine at this time but may include, as each respective employers’ written safety program may require, the costs of providing potable drinking water and, during daylight hours, shade or other cooling

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mechanisms at the workplace; and developing, implementing and training on heat illness and the employer's heat stress management program in its written safety program.

Prior to holding the public Notice of Intent to Adopt hearing on March 28, 2022, the Division held a workshop to solicit comments from the public on March 4, 2021, as well as public hearings on June 3, 2021 and October 14, 2021. Moreover, the Division held public shareholder meetings on January 7, 2022 and February 2, 2022 to solicit additional comments and feedback from members of the public.

As noted in Answer 1, above, the Division believes that there will be no direct beneficial effects on small businesses as the result of these regulations, but there may be indirect beneficial effects on reduced employee lost time from heat illness.

3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

- (a) Both adverse and beneficial effects; and**
- (b) Both direct and indirect effects.**

ANSWER: The Division anticipates that there may be a direct adverse financial effect on small businesses, which may include instances where employers of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit may expend time for developing and including a program for the management of heat illness in their written safety program as required by NRS 618.383. Other adverse effects, if any, are difficult to determine at this time but may include, as each respective employers' written safety program may require, the costs of providing potable drinking water and, during daylight hours, shade or other cooling mechanisms at the workplace; and developing, implementing and training on heat illness and the employer's heat stress management program in its written safety program.

The Division believes that there will be no direct beneficial effects on small businesses as the result of these regulations, but there may be indirect beneficial effects on reduced employee lost time from heat illness.

4. Describe the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

ANSWER: Prior to holding the public Notice of Intent to Adopt hearing on March 28, 2022, the Division held a workshop to solicit comments from the public on March 4, 2021, as well as public hearings on June 3, 2021 and October 14, 2021. Moreover, the Division held public shareholder meetings on January 7, 2022 and February 2, 2022 to solicit additional comments and feedback from members of the public. Through these several meetings, the Division considered the comments from members of the public and amended the language of the proposed regulations accordingly.

5. The estimated cost to the agency for enforcement of the proposed regulation.

ANSWER: There is no additional cost to the agency for enforcement of this regulation.

6. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

ANSWER: The proposed regulation does not provide for a new fee or increase an existing fee payable to the Division.

7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

ANSWER: The proposed regulation does not include any provisions which duplicate or are more stringent than existing federal, state, or local standards.

8. The reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.

ANSWER: The Division complied with NRS 233B.0608 by considering the purpose and scope of the proposed amendments. This proposed regulation mitigates heat stress related illnesses of employees at the workplace. The Division made a concerted effort to determine whether the proposed regulations impose a direct or significant economic burden upon small businesses, or directly restricts the formation, operation, or expansion of a small business. The Division determined that these regulations will have minimal effect on small businesses and will not restrict the formation, operation or expansion of small businesses.

I, VICTORIA CARREÓN, Administrator of the Division of Industrial Relations, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement was prepared properly and is accurate.

DATED this 22nd day of March, 2022.



VICTORIA CARREÓN, Administrator