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Interim Deputy Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

AMENDED 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
May 6, 2021 at 10:00 a.m.
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 Thursday, May 6, 2021 at 10:00 a.m. This meeting will be held *via* a Webex meeting only. Webex allows for video and teleconferencing. Pursuant to Governor Sisolak's March 22, 2020 Declaration of Emergency Directive 006, the requirement contained in NRS 241.023(1)(b), that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate, is suspended in order to mitigate against the possible exposure or transmission of the COVID-19 (Coronavirus). Accordingly, any person planning to participate in the meeting must participate by using the Webex Access information immediately below.

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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 stress in the workplace. The proposed regulations are necessary to mitigate occupational injuries and illnesses resulting from heat exposure in the workplace. In calendar year 2019 there were a total of 3,080 reports in the United States of nonfatal occupational injuries and illnesses resulting from exposure to environmental heat; 47 accepted workers’ compensation claims in Nevada in fiscal year 2020; and a total of 113 complaint or referrals to Nevada OSHA in calendar year 2020.*

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 stress on employees at the workplace, which is the cost of acquiring a wet-bulb globe heat stress meter, which starts at \$125.10, plus tax. Other adverse effects, if any, are difficult to determine at this time but may include the costs of providing potable drinking water and 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. 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 stress in the workplace. The adverse effects, if any, are difficult to determine at this time but may include the costs of a wet-bulb globe heat stress meter (\$125.10 per unit) available for each covered workplace; providing potable drinking water and 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. There will be no indirect costs to regulated or small businesses.

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 stress on employees at the workplace. There will be no direct or indirect cost to the public.

The Division believes that there will be no beneficial effects, either direct or indirect, on the public as the result of these regulations.

(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 stress on employees at the workplace. There will be no direct or indirect costs to the public.

The Division does not anticipate any long-term effects, either adverse or beneficial, on the public as a result of these regulations. 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 stress 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 Donald C. Smith, Esq., Senior Division Counsel, Division of Industrial Relations, 3360 W. Sahara Avenue, #250, Las Vegas, Nevada 89102 or by email to donaldsmith@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 Kim Toledo, at the Occupational Safety and Health Administration, 3360 W. Sahara

Ave., #200, Las Vegas, Nevada 89102, or by calling (702) 486-9168 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. http://dir.nv.gov/Meetings/Meetings/](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.

The requirements set forth in NRS 241.020(4)(a) for the posting of agendas for public meetings was suspended in Governor Sisolak's March 22, 2020 Declaration of Emergency Directive 006. This notice has been posted on Nevada's notice website: <http://leg.state.nv.us/App/Notice/A/>; and the Division's website: <http://dir.nv.gov/Meetings/Meetings>, as set forth in NRS 241.020(4)(b) and (4)(c).

**PROPOSED REGULATION OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R053-20

January 25, 2021

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

AUTHORITY: §§1-12, NRS 618.295 and 618.315.

A REGULATION relating to occupational safety and health; adopting by reference certain standards relating to heat stress and strain; imposing certain duties on employers of employees who are exposed to certain high temperatures; requiring employers to ensure that employees have ready access to potable drinking water; requiring employers to provide employees with access to shade under certain circumstances; 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; providing that an employee is responsible for monitoring his or her own personal risk factors for heat illness; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 6 of this regulation provides that the Division of Industrial Relations of the Department of Business and Industry adopts by reference the Heat Stress and Strain portion of the 2020 edition of the Threshold Limit Values and Biological Exposure Indices published by the American Conference of Governmental Industrial Hygienists.

Existing law requires certain employers to establish a written safety program. (NRS 618.383) **Section 7** of this regulation requires an employer of employees who are exposed to certain high temperatures to: (1) include a program for the management of heat stress in the written safety program; and (2) encourage employees to frequently consume water or certain other beverages to ensure hydration.

Section 8 of this regulation requires an employer to ensure that employees have ready access to certain quantities of potable drinking water.

Section 9 of this regulation requires an employer to provide access to an area of shade to an employee who is suffering from heat illness or believes that he or she needs a period of time to recover from heat to prevent the heat illness.

Section 10 of this regulation requires an employer to provide its supervisory and non-supervisory employees with training relating to heat illness.

Section 11 of this regulation imposes certain duties on an employer of an employee who shows signs of heat illness or demonstrates symptoms of heat illness.

Section 12 of this regulation provides that an employee is responsible for monitoring his or her own personal risk factors for heat illness.

Section 1. Chapter 618 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 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. *The Division hereby adopts by reference the Heat Stress and Strain portion of the Threshold Limit Values and Biological Exposure Indices, 2020 edition, published by the American Conference of Governmental Industrial Hygienists. This publication is available from the American Conference of Governmental Industrial Hygienists, 3640 Park 42 Drive, Cincinnati, Ohio 45241, by telephone at (513) 742-2020 or at the Internet address <https://www.acgih.org>, at a cost of \$41.21.*

Sec. 7. *An employer of employees who are exposed to temperatures at or above the Wet-Bulb Globe Temperature in Celsius, as defined in Section 2 and Table 2 of the Heat Stress and Strain portion of the Threshold Limit Values and Biological Exposure Indices, 2020 edition, adopted by reference in section 6 of this regulation shall:*

1. *Include a program for the management of heat stress in the written safety program required pursuant to NRS 618.383; and*
2. *Encourage employees to frequently consume water or other acceptable beverages to ensure hydration.*

Sec. 8. 1. *An employer shall ensure that employees have ready access to potable drinking water.*

2. *Where potable drinking water is not plumbed or otherwise continuously supplied, an employer must provide potable drinking water in sufficient quantity at the beginning of each work shift to provide one quart of potable drinking water per employee per hour for the entire shift. An employer may provide employees with a smaller quantity of potable drinking water at the beginning of a work shift if employees have effective procedures for replenishment during*

the shift as needed to allow the employees to drink one quart or more of potable drinking water per hour.

3. An employer shall encourage employees to drink water frequently.

Sec. 9. 1. *An employer shall provide access to an area with shade that is either open to the air or provided with ventilation or cooling for a period of not less than 5 minutes to an employee who:*

(a) Is suffering from heat illness; or

(b) Believes he or she needs a period of time to recover from the heat to prevent heat illness.

2. An employer must permit access to shade as described in subsection 1 at all times.

3. An employer in an industry other than agriculture may, in lieu of shade, provide employees with a measure for cooling other than shade, including, without limitation, the use of fans, or devices which produce water mist, if the employer can demonstrate that the measure is at least as effective as shade in allowing employees to cool.

4. Shade may be provided by a canopy, umbrella or other temporary structure or device. At a minimum, the canopy, umbrella or other temporary structure or device used to provide shade must prevent:

(a) Objects within the area of blocked sunlight from casting a shadow; and

(b) Heat in the shaded area from defeating the purpose of shade by preventing the body of an employee from cooling.

5. As used in this section, “shade” means a blockage of direct sunlight.

Sec. 10. 1. *An employer shall provide training on the following topics to all supervisory and non-supervisory 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 employer's procedures for complying with the requirements of sections 7, 8 and 9 of this regulation.*
- (d) The importance of frequent consumption of small quantities of water, up to 4 cups per hour, 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.*
- (e) The importance of acclimatization.*
- (f) The different types of heat illness and the common signs and symptoms of heat illness.*
- (g) 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.*
- (h) 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) Contacting emergency medical services and, if necessary, for 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 in training 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. 11. *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 sufficient means to reduce his or her body temperature to a deep body temperature of not higher than 100.4 degrees Fahrenheit or 38 degrees Celsius; and

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

Sec. 12. *Each employee is responsible for monitoring his or her own personal risk factors for heat illness, including, without limitation, consumption of water or other acceptable beverages to ensure hydration.*



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

SMALL BUSINESS IMPACT STATEMENT
AS REQUIRED BY NRS 233B.0608 AND 233B.0609
LCB FILE NO. R053-20
February 18, 2021

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, no beneficial direct effect, and will also have no indirect effect on small businesses, either adverse or beneficial. The possible direct adverse effect on small businesses would be the cost of providing potable drinking water; providing shade or other cooling mechanisms at the covered work places; having a wet-bulb globe heat stress meter available for each covered work place; and developing and implementing training on heat illness and the employer’s heat stress management program in its written safety program. The cost of a wet-bulb globe heat stress meter starts at \$125.10, plus tax.

2. The manner in which the analysis was conducted.

ANSWER: As noted in Answer 1, above, there will be a direct adverse financial effect on small businesses to acquire a wet-bulb globe heat stress meter, which starts at \$125.10, plus tax. As noted in Answer 1, above, there will be no direct beneficial effect or indirect financial effect on small businesses, either adverse or beneficial.

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 a direct adverse effect on small businesses in providing potable drinking water; providing shade or other cooling mechanisms at covered work places; having a wet-bulb globe heat stress meter (\$125.10 per unit) available for each covered work place; and developing and implementing training on heat illness and the employer’s heat stress

management program in its written safety program. The Division anticipates no beneficial effects, either direct or indirect, on small businesses as the result of the adoption of this regulation.

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: Because there will be no substantial impact on small businesses, there are no methods available to reduce the impact the Division could have considered.

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 CARREON, 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 18th day of February, 2021.


VICTORIA CARREON, Administrator