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Department of Labor & Industries
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RE: Comments on Ambient Outdoor Heat Exposure Rules

Dear Ms. Shute:

Thank you for the opportunity to comment on these proposed changes to the ambient outdoor heat exposure rules.

Wafla is a non-profit 501(c)(6) membership organization comprised of nearly 800 agricultural and seasonal employers. We offer ways for our members to access several federal visa programs and receive assistance complying with state and federal labor standards. Most workers on our members' worksites are involved in agriculture and other outdoor work.

Since our members are primarily agricultural operations, our comments refer to the WACs pertaining to agriculture (296-307), but the changes we suggest should apply to both agricultural and non-agricultural outdoor workplaces and WACs.

We are fully in support of reasonable workplace safety standards. Our association routinely recommends that our members participate in the safety consultation program at L&I, receive safety advice from Washington Farm Bureau and other private industry consultants, and send their workers to Ag Safety Day. We are committed to farmworkers remaining safe at work.

However, in some areas these rules go beyond what we believe is reasonable for outdoor work. We respectfully request consideration of the comments below.

WAC 296-307-09730 Employer and employee responsibility
Section (1)(a) requires that employers "address their outdoor heat exposure safety program in their written accident prevention program (APP) in a language that employees understand." This requirement implies that an APP should be made available to employees in a language they understand when, in fact, there is no requirement to make an APP available to employees. An APP is for employer use and is not required to be shared with employees or written in a specific language for employees. This requirement would force employers to have their entire APP translated. Instead, we believe the words "in a language that employees understand" should be taken out of (1)(a). If you want to include this requirement, it should be included in (1)(c). This change would mean that outdoor heat exposure safety programs would be included in the APP and that outdoor heat exposure safety programs (separate from the APP) would be available to employees in a language they understand.

We have concerns with the language of section (1)(c) and object to “and their authorized representatives” being included in that language. If the outdoor heat exposure safety program is to be made available to employees, then employees can provide it to their representatives. The term “authorized representatives” is not defined. These rules should not require an employer to provide workplace information to a third party unless an agreement exists between the employer and employees recognizing a particular person or organization as an “authorized representative.” The department should strike “and their authorized representatives” from this proposed rule.

Section (1)(e) states that employers must “encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so….” We believe employees should be safe and take reasonable measures to avoid heat-related illness, but this language is imprecise, subjective, and open to abuse. According to this language, employees can take a paid rest break of unspecified duration whenever they “feel the need to do so.” There is no limit on these employee-initiated, employer-paid cool-down periods. Do employees have the right to take a preventative break at any temperature? When does the employee return to work – whenever they want to? What rate of pay is used to calculate these cool-down breaks? What protections do employers have when employees take advantage of this open-ended language? Can employers be accused of discrimination or retaliation if they question the validity of excessive cool-down periods? The language used in this subsection needs to be rewritten to include objective criteria and reasonable sideboards to prevent employees' potential abuse of these unlimited paid breaks.

The 80-degree threshold for all other clothing in Table 1 is too low and does not consider Washington's climate and geographic differences. A temperature of 80 degrees in eastern Washington would be regarded as a refreshingly cool day during most of the summer. If the department wants a single, standardized trigger temperature across the entire state, it should keep the current 89-degree standard. This current trigger temperature of 89 degrees is safe, reasonable, and effective.

WAC 296-307-09740 Drinking water
Section (1)(a) requires employers to “ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times.” The terms “suitably cool” and “readily accessible” are not defined and must be clarified. How will these standards be cited and enforced?

WAC 296-307-09745 Acclimatization
These acclimatization standards are confusing, are unnecessary, and should be deleted from these proposed rules. The trigger temperatures of 52 degrees and 80 degrees in Table 1 of WAC 296-307-09730 are, again, too low. Many outdoor workers, especially in the agricultural workforce, have already and traditionally been working in warm conditions and are already acclimated to warm weather. These proposed rules need to consider workers' previous work and living conditions. Employees may already be acclimated to working in these weather conditions, especially if they live locally but are “newly assigned” to outdoor work by a new employer. These proposed rules unsuccessfully force a standardized solution onto numerous and varied situations. The heat wave calculations are complicated to understand, document, and enforce. How is acclimatization affected when the temperature changes above and below the trigger points? For example, when an employee is acclimated at the 80-degree temperature threshold and the temperature goes below 80 degrees for seven days and then goes back up above 80 degrees, do employees have to acclimate again for 14 days? This acclimatization section creates more questions than it answers. Close observation of employees for signs of heat-related illness in a high-heat context is already found in proposed WAC 296-307-09747(2). As such, these acclimatization standards are unnecessary, and we ask

the department to strike WAC 296-307-09745 in its entirety and remove references to it from the rest of the rule proposal.

WAC 296-307-09747 High heat procedures
Section (1) mandates mandatory cool-down rest periods of 10 minutes every two hours at or above 90 degrees and 15 minutes each hour at or above 100 degrees. We are concerned that these standards are unreasonably excessive and costly. Also, according to the note under Table 2, "The department will review work-rest periods within three years after the outdoor heat exposure rule goes into effect. We will review applicable data including, but not limited to, heat-related illness claims, inspections, other national and state regulations, peer-reviewed publications, and nationally recognized standards." This type of evaluation needs to be done before rule adoption, not afterward. We recommend deleting all of section (1) of proposed WAC 296-307-09747.

WAC 296-307-09760 Information and training
Section (1) states, "…Training must be provided in a language and manner the employee or supervisor understands…." What is meant by the addition of "manner" that is not already covered by the word "language"? The words "and manner" can probably be deleted.

Section (2)(e)(iii) states, "Employees are unable to build a tolerance to working in the heat during a heat wave." First, (i) and (ii) immediately preceding this sentence are phrases, yet (iii) is a complete sentence. These three items need to be grammatically consistent. They should all be either phrases or complete sentences. Second, the word "unable" states clearly that workers cannot ever acclimate to weather conditions during a heat wave, but WAC 296-307-09745(2) states that workers can work during a heat wave subject to specific requirements. Using the word "unable" creates an inconsistency between two proposed WACs that needs to be resolved. Finally, the term "heat wave" is not defined in WAC 296-307-09760. It is defined in WAC 296-307-09745(2) but only "for purposes of that section only." This is a structural and grammatical oversight that needs to be remedied.

The best way to remedy these issues is for section (e) to state "The importance of acclimatization;" and delete the new language that follows down through the end of (iii). We recommend making changes to (2)(f) and (g) so that they are consistent with our comments above on preventative and mandatory cool-down rest periods.

Please get in touch with me if you have questions or need clarification about these comments.

Thank you for considering our perspective and comments on this rule proposal.

Sincerely,

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