



SCWA Legislative & Regulatory Update

August 26, 2024



Judge Blocks FTC Noncompete Rule

In April, the Federal Trade Commission (FTC) issued a new rule which essentially bans non-compete limitations for workers in the United States.

The rule banning non-competes was scheduled to go into effect on September 4, 2024.

On August 20, 2024, Judge Ada Brown of the U.S. District Court for the Northern District of Texas ruled that the Federal Trade Commission (FTC) lacks legal authority to implement its “non-compete” rule.

A tax firm, Ryan LLC, sued to block the rule in April. The U.S. Chamber of Commerce later joined the case as a plaintiff, as did the Business Roundtable, and two other business groups. Judge Brown concluded that the FTC exceeded its statutory authority in promulgating the rule and that the rule itself was arbitrary and capricious. Therefore, the rule is considered unlawful and, for the moment, is now set aside (i.e., not enforceable).

[Attached is the Court’s Memorandum Opinion and Order.](#)

Victoria Graham, an FTC spokeswoman, said that the FTC would “keep fighting to stop non-competes that restrict the economic liberty of hardworking Americans.” Ms. Graham is further reported to have said that the FTC is “seriously considering a potential appeal, and the decision does not prevent the F.T.C. from addressing non-competes through case-by-case enforcement actions.”

This does leave open the possibility of further review by higher courts.

But, for now, there is a reprieve and the rule is not enforceable.

Please let us know if you have any further questions.

[Click here to view the full rule.](#)

OSHA Advances Proposed Standard on Heat Injury, Illness Prevention

The Occupational Safety and Health Administration (OSHA) has continued to advance its proposed standard for heat injury and illness prevention.

The agency, which has been working on a [heat stress standard](#) since President Biden took office in 2021, released a proposed rule on “**Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings**” on July 2, 2024. The regulatory text and the full 437 pages of the notice are [attached](#). This is not yet in effect, but could very well be in effect later this year.

Summary of the proposed OSHA Heat Rulemaking

The proposed heat standard covers nearly all employers regulated by OSHA. The proposed rule requires employers to develop a “Heat Injury and Illness Prevention Plan” with site-specific information to identify, monitor, and control heat hazards in the workplace. The proposed standard requires employers to implement specific control measures if the temperature reaches an Initial Heat Trigger (a heat index of 80°F) with additional controls required when the temperature reaches a High Heat Trigger (a heat index of 90°F). [Attached is OSHA’s fact sheet.](#)

If operating under the Initial Heat Trigger (a heat index of 80°F), employers must provide employees with the following:

- Sufficient amounts of cool drinking water in readily accessible locations;
- Paid rest breaks in area(s) with cooling measures;
- Indoor work area controls (such as air conditioning or fans); and
- If provided by the employer, personal protective equipment (PPE) with cooling PPE that is maintained at all times during use.

If operating under the High Heat Trigger (a heat index of 90°F), employees must be provided with the controls required for the Initial Heat Trigger along with the following:

- Mandatory paid rest breaks of 15 minutes at least every two hours (unpaid meal break may count as a rest break);
- A system for observing employees for signs and symptoms of heat-related illness; and
- A hazard alert reminding employees to drink water and take breaks.

Previous Process and Timeline

OSHA has long tackled heat related injury and illness under its general duty clause, issuing [technical guidance](#) regarding heat stress prevention in 2016 and adopting a similar [National Emphasis Program](#) in 2022. This 2024 proposed dedicated

standard explicitly identifies the hazard when conditions have reached unsafe levels of heat exposure and provides clear parameters to mitigate the risks that heat stress poses for employees.

The attached proposed rule has not yet been published in the Federal Register. When publication occurs, it will be open to commentary from the public before becoming final (and in effect). The agency also plans to hold an informal public hearing on the proposed rule. It remains to be seen whether the new standards will become final under the current administration, and the outcome will likely largely depend on the results of the upcoming election. If there is a change in administration, a final heat rule could be challenged through the Congressional Review Act (CRA), which act could be used in the next presidency to block recently completed rules and regulations.

Additional Background from Around the United States

OSHA's proposed rulemaking comes as other jurisdictions consider similar requirements. Joining Minnesota, Oregon, and Washington, California **adopted** a similar rule for indoor workers earlier this year. And, in March, Phoenix's City Council also **adopted** similar heat protection requirements for city contractors.

In Florida, however, Gov. Ron DeSantis recently signed **House Bill 433** into law that preempts cities and counties from adopting heat stress prevention requirements, joining Texas in barring local governments from adopting such measures. Regardless of local action, if OSHA finalizes the proposed standard, these requirements must be adhered to by employers as enforced by state agencies in state plan states which are required to have matching standards, and by OSHA in the remaining jurisdictions.

Relief may be in sight for many as temperatures begin to break across the country. For employers, however, it's going to continue to be a hot one as this new OSHA standard advances in the rulemaking process.

The Legislative Update will resume on 9/9/24. Enjoy your Labor Day!

