



SCWA Legislative & Regulatory Update

July 8, 2024



OSHA Heat Illness NPRM Released

OSHA released its proposed rule on “Heat Illness Prevention in Outdoor and Indoor Work Settings.” The text of the rule is available [here](#).

OSHA has also provided additional materials on its [website on the rulemaking](#).

OSHA would adopt two heat index thresholds that would apply nationally and would factor in humidity as well as temperature. One, at 80 degrees Fahrenheit, would require employers to provide drinking water and break areas that workers can use as needed. Employers would also need to have a plan for new and returning workers to gradually increase their workload so their bodies adjust to the heat.

More protections would kick in at 90 degrees, including monitoring for signs of heat illness and mandatory 15 minute rest breaks every two hours. Employers would be required to check on people working alone every few hours and to issue a hazard alert, reminding their workers of the importance of staying hydrated.

The proposed rules would not cover workers who are only briefly exposed to high temperatures — such as traveling outdoors between buildings — or where the nature of the job makes such protections infeasible, including emergency response. Employers covered by the rule will have to designate a heat safety coordinator and evaluate their heat safety plans every year.

They will also have to monitor workers’ exposure, such as by tracking heat index or using a measure called the [Wet Bulb Globe Temperature](#) — a tool that incorporates temperature, humidity, wind and other factors to assess potential heat stress. Minnesota uses the tool as part of safety standards for indoor workers, and several states use heat index to protect those working outside.

OSHA’s proposal layers on four additional precautions when the heat index reaches beyond 90 degrees. They include mandatory 15-minute rest breaks for all employees every two hours, observing employees for symptoms, periodic check-ins with isolated workers and reminders to workers to rest and drink water.

Overtime Rule: Judge Blocks Implementation for TX State Employees

On Friday, June 28, the US District Court for the Eastern District of Texas issued a decision in the Texas Attorney General's case challenging the Department of Labor's overtime [final rule](#). The judge in the case issued a temporary restraining order (TRO) blocking implementation of the rule **for Texas state employees only**.

For the rest of the employer community, the rule goes into effect today, July 1. As of today, the minimum salary threshold is set at \$43,888, while the threshold for highly compensated employees is \$132,964.

Despite the limited reach of the TRO, this is good news. Courts issue TROs when they believe the plaintiffs are likely to succeed on the merits. This means that the District

Court is likely skeptical about the legality of DOL's rule and may be considering nullifying the rule in its entirety. We'll keep you updated on the case as we can.

CTA Legal Update

Oral arguments in *NSBA v Yellen*, the case challenging the constitutionality of the CTA, will be heard on September 23 by the Eleventh Circuit Court of Appeals. While the court is working under an expedited timeline, that date is just three months ahead of the year-end filing deadline for existing entities. We expect a positive decision before the end of the year, but it's going to be close.

To recap our latest alert, the total number of pending CTA challenges is currently at six nationwide:

- Massachusetts: BECMA et al v Yellen (5/29/2024)
- Texas: NFIB et al v Yellen (5/28/2024)
- Maine: William Boyle v. Yellen (3/15/2024)
- Michigan: Small Business Association of Michigan et al v. Yellen (3/1/2024)
- Ohio: Robert J. Gargas Co., L.P.A. et al v. Yellen (12/29/2023)
- Alabama (appealed): NSBA et al v. Yellen (11/15/2022)

CTA News Update:

- NFIB President Brad Close's piece in the Washington Times urges lawmakers to repeal the CTA.
- FinCEN touted its outreach efforts last week, pointing out that it has reached more than 81,000 stakeholders so far. That's 0.2% of the 32 million entities it estimates will need to sign up under the CTA by the end of the year.
- Treasury is ramping up its PR efforts, branding the CTA as a necessary tool in combatting fentanyl trafficking. So now American small businesses are drug traffickers as well as money launderers.



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