

September 29, 2023

Hon. Douglas Parker
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210

RE: OSHA Heat Safety Standards Small Business Advocacy Review Panel

Dear Assistant Secretary Parker:

Thank you for convening the recent Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel to discuss OSHA's potential rulemaking for a heat safety standard. I appreciated the opportunity to participate as a small entity representative (SER) on the panel. Below please find my additional comments and questions on the materials provided.

The SBREFA Panel provided statistics stating that between 2011-2020, 33,890 work related heat injuries and illnesses occurred, resulting in employees taking days away from work. It further states that exposure to environmental heat has killed 999 US Workers from 1992-2021. While this data is meant to justify a new regulatory OSHA effort, there is no specificity that indicates in which industries these injuries occurred. There is also no other specific information included, such as how, when and where these deaths took place. I respectfully ask that OSHA break down the data by—at the very minimum—NAICS codes and geography. The further division of data would indicate geographies and industries that most need attention.

Second, in the statistics above, were there other influences that caused those injuries and illnesses and deaths? Employers are not legally permitted to ask what chronic conditions or illnesses a potential or present employee has or had, what medication they take, or lifestyle choices they make. Prospective employees are not always subject to preemployment drug tests either. An employer cannot know what drugs, legal or illicit, an employee may use. An employee may have several health factors putting them at risk of heat illness, and employer would never know. Without first-hand knowledge of an employee's health factors, how can an employer evaluate who should or shouldn't be placed in a position where heat may conflict with their health? I am certainly not advocating for employees to disclose confidential information but this is a challenge that OSHA needs to address. Employee health conditions can pre-determine responses that render a person unsuitable for work in certain climates. If OSHA's regulation is to make employers responsible for our employees' heat related illnesses and injuries, we must have the ability to access the necessary information to do so. It is not fair or feasible otherwise.

In highway heavy industry, we supply PPE for employees that includes hard hats with wider brims, neck coverings that attach to hard hats, high visibility safety vests and wicking long sleeve shirts, gloves, ear protection, dust masks, fall protection such as body harnesses, floatation devices such as life preservers, safety glasses and more. All this PPE is required to make them more visible, protect them from sun

which can lead to cancer, etc. We supply water and ice on the job during the construction season. Ohio is a state workers compensation system. So any injuries can quickly cause significant increases in premiums for small companies. Many of us participate in safety councils, worker training, and an annual safety congress. Our employees receive Red Cross first-aid, CPR, AED and Bloodborne pathogen training. This training also includes recognition of signs and symptoms of heat related emergencies and proper response. Additional training includes OSHA 10, 30 and competent person. The point here is that we have already invested in our training and PPE to keep employees safe from heat related illnesses and injuries. Any additional requirements would be duplicative.

In 2023, the US Department of Energy recommended setting thermostats to 78-degree Fahrenheit. It seems contradictory to recommend one temperature as comfortable in one setting but a heat trigger index of only two degrees higher in another. The federal government needs to better align its regulations and recommendations among agencies to avoid conflict and confusion.

The proposed rule assumes that employers don't have the best interests of their employees at heart. Nothing could be further from the truth. A small business cannot afford to lose an employee. Each employee serves specific and important functions. They are not replaceable. The time, effort, and cost required to find and train a new employee is too burdensome for a small business to absorb. Furthermore, the ongoing workforce labor shortages significantly impact small businesses. The goal of this effort should be to encourage employers to provide healthy workspaces and not to burden small businesses with more regulatory penalties and arduous record keeping.

OSHA's guidance suggests 10 employees as the cutoff for written plans. Small businesses have changed so much. Technology has infiltrated every aspect of our daily work life. Tools and equipment are so much more refined. I suggest OSHA raise that number.

Regarding engineering and administrative controls, these are best left to the employer. Employers know what is best for their employees given a particular climate. Some of the best ideas about how to protect workers come from our employees themselves who work these jobs every day.

In summary, I would caution OSHA against proposing this rule. If the agency does move forward with a proposal, I ask that OSHA offer the maximum flexibility within the rulemaking to allow employers to choose from several engineering and administrative controls depending on what is the most feasible for their business and which provides protections for their employees.

Thank you for the opportunity to submit these comments. I am available to answer any questions should you wish to speak with me further.

Sincerely,

Meg Rietschlin, President
Rietschlin Construction Inc