

New Mexico Home Builders Association

New Mexico Home Builders Association would like to take this opportunity to offer comments on the referenced Heat Illness and Injury Prevention Regulations. The construction industry has been complying with federal heat illness prevention requirements for many years, and finds this new rule is unworkable and unnecessary.

The stakeholder meetings last year included the information from OHSB staff that "the southeast and southwest regions of New Mexico had experienced the highest rate of Emergency Department (ED) visits resulted from/due to heat-related illness (HRI) in 2023. In 2023, there were total 968 heat-related ED visits reported in New Mexico from April 1st to September 30th where roughly two-thirds of the visits were among males. Out of these 968 heat-related ED visits, 52 visits were also reported as work-related which means those HRI occurred during people at work." While this was promoted as the impetus for the new rule, it ignored the fact that NM OHSB logs showed only 7 heat-related work illnesses in New Mexico during all of 2024. No data has been presented that any worker had been severely affected nor that any employee had become disabled or worse.

Specific issues with the new rule include:

- The new rule would impose rigid requirements for calculating temperature and humidity levels to arrive at a heat index hourly to determine if the rule applies at any point during the work shift. The NOAA chart in the rules are not applicable to the desert. The relative humidity is set at 40%, which is nowhere near the average for the state. Frequently the relative humidity is closer to 20%, which would lower the heat index on the chart considerably. Currently the adult workers on construction sites take frequent water breaks as they feel their own bodies require hydration. Construction employers commonly keep large amounts of water on job sites for the use of their employees, and the training on workplace safety includes instructions for employees to avail themselves of the provided water as needed.
- The threshold for applying the new rules to a worksite is set at an unrealistically low temperature. According to NOAA, the average June-September temperature for New Mexico in 2024 was 88 degrees. If a construction worker were in full sun, the rules would require 30 minutes of shade every hour. These are the average working conditions for contractors every summer in the state.
- Concrete pouring of monolithic structures requires the pour to continue for as long as it takes to fill the forms completely. Stopping during the pouring process will ruin the strength of the material. The only option for this work would be to somehow keep a duplicate team of workers in the shade to take over when the first team was required to take a break. This would more than double the labor costs for this function.
- It is well-documented that the construction industry is experiencing a shortage of workers. There simply are not enough trained workers to be able to keep two shifts on a job site at the same time.
- Changing the work shift to earlier hours so the work could be completed before the heat of the day would necessitate starting work around 5:00 a.m. This is impractical in residential areas where there are noise restrictions for construction activities before 7:00 a.m.
- The result of having to reduce productive work hours on a job site will necessarily delay the construction process. Time is money, and delays cost real money in terms of extended finance carrying costs. The added costs due a delay of two weeks could result in an \$8,625.73 (2.1%) increase in the sales price of a new home. The National Association of Home Builders research reveals that for every \$1,000 in the price of a home in New Mexico, 649 households can no longer

qualify for the mortgage for a median home. At a time when New Mexico is experiencing historical shortage of housing, this situation of pricing over 5,500 potential homeowners out of the New Mexico market each year is economically infeasible.

- We believe there are already existing standards in place (general duty clause and the Heat Illness Prevention Campaign by OSHA) in NM without implementing an onerous Heat and Illness state standard. Employers are already bound by OSHA's General Duty Clause and can be cited for failure to address heat-related hazards. Since 2011 OSHA's Heat Illness Prevention Campaign provides training, resources, and enforcement mechanisms to improve awareness and accountability. Adding more logging and records retention would likely not improve worker outcomes.
- Current use of buddy systems, pre-shift safety briefings, and hydration reminders reinforce awareness without disrupting productivity, and providing Heat Illness Prevention instruction are common parts of training during new hire orientation and annual safety refreshers.

For all of these reasons, and more, New Mexico Home Builders Association believes the proposed Heat Illness and Injury Prevention regulations are unnecessary, burdensome, and a threat to attainable housing urgently needed by the residents of New Mexico.

Respectfully Submitted,
Jenice Montoya-Eades,
2025 President
New Mexico Home Builders Association