

EMPLOYER OBLIGATIONS TO OUTDOOR EMPLOYEES ON HOT DAYS

Kelly McCarthy Sutherland, Esq.

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Employers in California must protect their employees from the effects of heat. In May 2010, the Cal OSHA Appeals Board issued *In the Matter of the Appeal of Big Valley Labor LLC*, a case clarifying what is required. Here are the underlying facts: On August 29, 2008, Cal OSHA conducted a planned inspection at the Botelho Ranch in Hollister. At 9:00 a.m. the OSHA inspector took a reading of 87° F in the field, and higher temperatures were recorded later in the day in the area.

The foreman kept a beach umbrella about 6 feet in radius in his pickup truck, but he had not yet deployed it when the inspectors came. Employees also had access to the shade of a large bush and to the comfort of their vehicles.

The administrative law judge determined: (1) a 6 foot diameter umbrella does not provide sufficient shade for a crew of 30; (2) the shade must be deployed and not merely available; (3) the large bush did not provide suitable shade because when the sun rises to its zenith, it would cast very little shadow; (4) the employer could not rely on the air conditioned cars in which the employees came to work in car pools; and (5) no vehicle will count as shade unless the air conditioning is actually running.

In order to protect their employees from heat illness, employers should take four steps:

- **Training.** Employers must train all of their employees and supervisors about heat illness prevention. Here is a website link that includes materials which employers may want to use in their trainings: <http://www.99calor.org/educational-resources/>. The training needs to include information about, among other things:
 - Recognizing when heat illness may occur;
 - How to recognize if heat illness is occurring;
 - What to do if the employee thinks they are experiencing heat illness; and
 - The importance of drinking water, especially on hot days.
- **Water.** Employers need to provide each of their employees with at least one quart of fresh water per hour to drink, and employers need to *encourage* their employees to drink the water.
 - The water should be placed in areas that the employees can easily access.
 - If the day is hotter than 90°F, the employer should provide ice to cool the water.

- **Shade.** Cal OSHA requires employers to provide shade if the prior day's 5pm National Weather Service forecast predicts temperatures of > 85 °F. Even if the forecast calls for cooler temperatures the night before, if the actual temperature exceeds 90 °F, shade needs to be provided.
 - Employers must provide shade for their employees to sit in for at least five minutes of rest if the employee believes that he or she needs a preventative recovery period. These rest periods are in addition to any paid rest periods required by the wage and hour laws and regulations.
 - The shade must be readily available as soon as the employee requests it—this means that shade tents should be set up prior to any employee needing shade.
 - Employers should provide enough shade so 25% of the workforce can be resting in the shade at the same time. Employers should have written procedure on what to do if more than 25% of the workers need shade at the same time.
 - The shade needs to be as close as practicable to where the employees are working.
 - A shaded area that does not allow cooling does not count as shade. For example, although an employee's car may block the sun and therefore be shaded, the heat inside the car could prevent cooling. Therefore, a car will not count as shade unless the air conditioner is running.

- **Planning.** Employers need to develop and implement plans to prevent heat illness.