Building Industry Association of Washington

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# NEWS RELEASE

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## L&I's Motto: If At First You Don't Succeed, Try and Try Again

OLYMPIA—After acknowledging last year that an overly restrictive rule regulating on-the-job heat stress related injuries was not necessary, the state Department of Labor & Industries (L&I) has now decided such a rule is necessary.

L&I has announced it will implement an emergency rule to impose restrictive heat stress requirements upon employers. Despite the fact that no objective evidence has emerged to demonstrate the pressing need for an emergency rule, L&I plans to propose and adopt the rule on the same day—June 5, 2007. Based on the draft of the proposed rule, employers should assume that by June 5 they will be required to provide heat stress training, have a written heat stress policy and provide workers with shade, cooling areas and one quart of drinking water per employee per hour.

Last year's proposed heat stress rule, which included many of the same requirements mandated in L&I's currently proposed rule, was met with vehement opposition by an overwhelming majority of businesses and organizations, and even local governments blasted L&I over their restrictive and unreasonable proposals. In a rare display of responding to the business community's concerns, then L&I director Gary Weeks bucked pressure from organized labor and worked with the business community to craft a heat stress policy focusing on education and training of employers and workers.

Despite last year's negative feedback and harsh criticism, L&I has reversed position and announced it will adopt an "emergency" rule even more restrictive and burdensome than last years' failed attempt. L&I's new emergency rule will apply to all outdoor workers and will remain in effect until January 2008—this means employees working in colder months such as October, November and December, will still require heat stress training and employers will still be required to provide these workers with one quart of water per hour. And unlike last year's failed proposal, L&I's new heat stress rule does not include a temperature trigger, which means employers must comply with all provisions of the rule as of June 5, regardless of temperature, or face up to five citable violations of the rule.

While L&I contends that heat-stress related injuries necessitate an "emergency" rule, data obtained from L&I indicates only three one-thousandths of one percent (.00311%) of all industrial insurance claims over the last ten years were heat stress related.

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According to a report published by L&I in 2006 containing a ten-year evaluation of heat related workers' compensation claims in the state, there were total of 1.44 million injured worker claims filed over a ten-year period in our state. During that same ten-year period just 446 of the total claims were for heat related illness—that's about 45 claims per year. And the report reveals evidence of "individual risk factors" that contributed to the so-called heat stress in many claims, such as medication use by employees (64 claims), co-morbid medical conditions (83 claims), short duration of employment (291), and obesity (can not track).

"So for fewer than fifty claims per year over ten years, when many of the claims are the result of personal, individual employee risk factors over which employers have no control, L&I wants to adopt an 'emergency' rule that will be extremely difficult for employers to comply with and will cost millions," said BIAW Human Resources Analyst Amy Brackenbury. "But the real motive behind L&I's emergency is that adoption of an 'emergency' rule allows them to skip pesky requirements such as public hearings and small business economic impact statements—serious obstacles to a rule as outrageous, burdensome and anti-business as this one," said Brackenbury. "3/1000th's of 1 percent is not enough to justify the implementation of a restrictive new rule, much less the expedited implementation of such a rule under the emergency rulemaking process—clearly L&I is caving to political pressure from organized labor to implement the costly, intrusive and restrictive rule."

L&I wants all employers with employees who work in an outdoor environment to provide comprehensive training prior to any assignments presenting heat-related illness hazards. The training must include topics such as "environmental and personal risk factors" that can lead to a heat-related illness, and the "importance of acclimatization." (Last year, L&I staff suggested that employees work just 15 minutes per hour in hot weather to help them become acclimatized.) "Of course, employers can't ask employees about their 'individual risk factors' relating to heat stress, such as alcohol or drug use, caffeine consumption, weight or age, but L&I wants employers to be responsible for them anyway," noted Brackenbury

Once the training has been completed, employers will have to ensure supervisors are monitoring the workers for signs and symptoms of heat-related illness and encouraging them to drink "frequent, small quantities of water." If any sign or symptom should arise, the employer must be prepared with shaded rest areas, misting stations, or temperature controlled environments in which the workers might recover.

Beyond the fact that heat stress-related on the job injury rates do not warrant a restrictive emergency rule, the fact is sufficient rules are already in place regulating heat stress. "In the two tragic cases where workers have died as a result of heat-related illness, regulations mandating adequate drinking water were already in effect—L&I failed to enforce the current law," said Brackenbury. "Unfortunately, L&I's response to their own failure to enforce the law is to implement new, more restrictive laws."