



## Interpretive Notice & Formal Opinion (“INFO”) #12C:

### Labor Conditions for Agricultural Work: Heat Protection; Short-Handled Tool & Hand-Weeding/Thinning Limits; Public Health Emergency Protections

#### Overview

This INFO covers, in agricultural employment:

1. **Required heat safety precautions** that apply (A) when the worksite high daily temperature is at least 80 degrees, or (B) if other “increased risk conditions” exist;
2. The **prohibition on short-handled hoe use, restrictions on hand-weeding and hand-thinning work,** and when employers are required to provide **knee pads and gloves** to employees; and
3. Additional complaint, housing, and notification rights and requirements in **public health emergencies** (please note that as of the date of this INFO, a **public health emergency is currently in effect**).

([INFO #12D](#) details how these rights are enforced, and which employers, employees, and work they cover.)

#### HEAT SAFETY PRECAUTIONS

Because working in heat can pose a significant danger to employees’ health and safety, the [Agricultural Labor Rights and Responsibilities Act \(“ALRRA”\)](#) and the Division’s [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, require agricultural employers to adopt both **(1) basic heat precautions** when the forecasted outdoor (or measured indoor) high temperature at the worksite is **at least 80 degrees**, and **(2) additional heat precautions** when there are “increased risk conditions” (for example, when the high temperature is at least 95 degrees, employees are in their first four days of work, or there is “unhealthy” air quality at the worksite). Employers also have **annual and ongoing safety obligations**, such as creating a heat safety emergency response plan and providing employees with yearly heat safety training. These rules take effect May 1, 2022 (with training first required to be completed by May 31, 2022).

**When Precautions Apply.** To know if basic heat or “increased risk conditions” rules apply at an **outdoor worksite**, employers are required to evaluate weather and other conditions on a day-to-day (daily) basis. Employers must use a temperature forecast:

- from any reliable source (professional weather service, mass media source, government entity, etc.);
- for a place that covers the worksite (or, if no forecast is available, the nearest place with a forecast); and
- from no earlier than noon the day before.<sup>1</sup>

To know if basic heat precautions or “increased risk conditions” rules apply at an **indoor worksite**, an employer must measure the worksite’s temperature during each workday. The basic heat precautions apply on any day when (1) the measured temperature exceeds an 80 degree threshold, or (2) regardless of the measured temperature, the employer has reason to expect the temperature will exceed the threshold.<sup>2</sup>

**If an employer learns only after a workday or shift begins** that (1) the temperature will meet the 80-degree threshold or (2) one or more other “increased risk conditions” apply, it must take the required precautions described below as soon as possible after learning of the changed conditions.<sup>3</sup>

**If complying with any heat precaution is impossible or unsafe**, employers must: (1) follow the precautions as much as possible, (2) use “equivalent” protective measures (e.g., an air-conditioned vehicle rather than

<sup>1</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.1.1(B) (effective May 1, 2022).

<sup>2</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.1.1(A). An employer would have reason to expect the indoor high temperature will exceed the threshold, for example, if (1) the employer intends to cause the indoor temperature to meet the threshold; (2) outdoor weather conditions give the employer reason to expect an indoor temperature meeting the threshold; or (3) if, in one of the last three workdays, the indoor worksite had a high temperature that met the threshold.

<sup>3</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.1.2.

unsafe shade), and (3) describe the equivalent measures and the reason for using them **in writing**.<sup>4</sup>

**A. Basic Heat Precautions.** When a worksite high temperature is **80 degrees or higher**, employers must:

1. **Provide adequate shade for employees to use during rest, meal, cool-down, and other breaks.** This shaded area can be natural (e.g., from trees) or artificial (e.g., from a tent/structure), but it must be:
  - **located as close to the worksite as practical**, and close enough for employees to reasonably access it during breaks (not further than 0.25 miles for employees accessing it by foot);
  - **large enough** for employees to fit fully shaded in a normal posture, without touching each other;
  - **safe, sanitary, and healthy** for employees to use, and not with any condition that would discourage employees from using it, such as being near garbage; and
  - **ventilated or open to the air**.<sup>5</sup>

If adequate shade can't be provided safely (for example, if it is dangerous for employees to be in a shaded area in the open due to high winds), **employers must provide effective alternatives** to let employees cool down: for example, by providing an air-conditioned space (e.g., a vehicle or structure) where they can rest, or by providing them with individual cooling devices/items without cost or deduction (e.g., towels or vests made of specialized material to retain a cool temperature).<sup>6</sup>

2. **Provide cool, clean, and close drinking water on shifts and breaks.** Employers must provide each employee at least 32 ounces of cool, potable (clean, safe, and drinkable) water per hour. Employees must be permitted to drink water and use restrooms on shifts and breaks. The water must be:
  - **located as close to the worksite as practical**, and close enough for employees to reasonably access it during shifts and breaks (not further than 0.25 miles for those accessing it by foot);
  - **kept 60 degrees or cooler**, by any method the employer chooses; and
  - **provided from a sanitary source**.

If an employer cannot provide range or ranch workers who travel away from the worksite for most (or all) of the day with drinking water as described above, they must be provided with:

- as much water as possible, including by re-supplying them with water whenever the employer re-supplies or otherwise visits a location near the employees, and
- equipment to carry potable water; if it is not possible to carry enough potable water as described above, an employer must provide, without cost or deduction, equipment that allows an employee to purify water from non-potable sources, such as water purification containers.<sup>7</sup>

3. **Provide additional, preventative, cool-down rest when needed.** If an employee believes it is necessary to prevent or remedy overheating, an employer must allow them to take an additional preventative, cool-down rest period and must:
  - monitor the employee (or if they are outside others' presence, communicate with them as frequently as needed) to ask if they have signs or symptoms of heat illness or injury;
  - if any symptoms persist after resting, respond appropriately given the severity of symptoms (including contacting emergency medical services if necessary); and
  - not send the employee back to work until any such signs or symptoms have stopped, but in no event in less than 10 minutes after the employee reaches the shade.<sup>8</sup>

<sup>4</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.1.3.

<sup>5</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.3.

<sup>6</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.3.1. Employers of range workers must let them seek and use shade on rest and meal breaks, and otherwise limit the impact of heat and sun exposure (Rule 3.3.2).

<sup>7</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rules 3.2, 3.2.1.

<sup>8</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rules 3.4.3; 3.5.5. An employer can provide preventative cool-down rest at the same time as other rest or meal periods already required by the Colorado Overtime and Minimum Pay Standards ([COMPS Order](#)), 7 CCR 1103-1, or [Agricultural Labor Conditions Rule 3](#), but such rest can't be denied or delayed due to scheduling or using other rest or meal periods ([Agricultural Labor Conditions Rules](#), Rule 3.5.5).

**B. Increased Risk Conditions.** Employers must take **additional precautions** (detailed below) when worksite conditions (in addition to 80-degree temperature) include one or more of the following:

- **High Heat:** The daily high forecast or measured worksite temperature is at least 95 degrees;
- **Unhealthy Air Quality:** The Colorado Department of Public Health and Environment (CDPHE) has issued an Air Quality Advisory or Action Day for a location including the worksite;
- **A Long Workday Is Reasonably Expected:** An employee (other than a range worker) is scheduled or reasonably expected to work over 12 hours in the workday or shift;
- **Heavy Clothing or Gear Is Required:** An employee is required to wear clothes that make it more difficult for sweat to evaporate into the outside air, or personal protective equipment (PPE), either as an additional layer over their regular clothes, or PPE that covers all or almost all of their head and face; or
- **Acclimatization Is Required:** An employee is in their first four workdays for the employer (which includes their first four days of work for the employer in over a month).<sup>9</sup>

If one or more of the “Increased Risk Conditions” apply, **in addition to taking the basic heat precautions** described above (providing water, shade, and preventative cool-down rest if needed), an employer must also:

1. **Provide Additional, Paid Rest Time:** Employees must not perform more than two hours of work before at least 10 minutes of rest are provided, by any mix of spacing out any breaks already required, and/or providing additional breaks meeting the rest or meal period requirements under the COMPS Order. See [INFO #12B](#) for a description of the COMPS rest and meal period requirements.<sup>10</sup>
2. **Provide Notice of Rights:** Before a workday or shift starts (or as soon as possible during a shift, if the employer only later learns of an increased risk condition), an employer must notify employees, by any effective method, of their rights to heat protections in “increased risk conditions,” including:
  - adequate drinking water, and adequate shade, for use during rest, meal, and other breaks;
  - additional breaks as described in #1 above, so employees perform no more than two hours of work before at least 10 minutes of rest are provided; and
  - additional preventative cool-down rest periods if needed.

For notice to be “effective” for non-English-speaking employees, it must be in their native language.<sup>11</sup>

### **C. Annual And Ongoing Obligations**

If at any point in the calendar year, a worksite temperature of at least 80 degrees is “reasonably expected” (i.e., if the temperature was at least 80 degrees on any day during the last year, or if it is forecasted to be (or reaches) at least 80 degrees in the current year),<sup>12</sup> an employer has the following obligations:

1. **Establish a Reliable Method of Communication With Employees:** Employers must provide a reliable method (e.g., by radio or phone) to communicate with employees, which allows employees to contact emergency medical services if necessary.<sup>13</sup>
2. **Monitor Reports of Heat Illness/Injury:** Employers are required to have an effective system in place to monitor any signs of heat illness or injury, such as by observing employees (up to 20 employees per designated individual), using a mandatory buddy system that allows employees to monitor each other, or regularly communicating with any employee working outside the presence of others.<sup>14</sup>
3. **Establish Emergency Response Plans.** Employers are required to establish emergency response plans for heat illness and injury, including:
  - Designating at least one person at each worksite who is responsible for contacting emergency medical services when needed, and letting others do so if that person is unavailable; and

<sup>9</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.4.1.

<sup>10</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.4.2 (employers of range workers must encourage spacing the [COMPS Order](#) rest breaks and other rest opportunities to include rest every two hours as much as possible).

<sup>11</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.4.3.

<sup>12</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.1.4.

<sup>13</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.5.1.

<sup>14</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.5.2.

- Ensuring, in an emergency, that:
  - emergency medical services are contacted, and provided all necessary information (including contact information and directions to reach the employee(s), as immediately as possible), and
  - if necessary and appropriate, employees are transported where emergency medical services can reach them.<sup>15</sup>

**4. Respond Quickly and Appropriately to Possible Heat Illness or Injury.** When signs or symptoms of heat illness or injury are reported by anyone or observed by a supervisor, employers must respond quickly and appropriately, including by:

- Quickly relieving the employee showing or reporting signs or symptoms from duty (or permitting the employee to relieve themselves from duty);
- Monitoring the employee's signs or symptoms (or for employees outside the presence of others, checking in as frequently as necessary to adequately monitor their health and safety); and
- Calling emergency medical services if an employee has severe signs or symptoms (e.g., decreased consciousness, staggering, vomiting, disorientation, irrational behavior, convulsions, or (even after resting) an increased heart rate).<sup>16</sup>

**5. Provide Heat Safety Training.** Employers are required to provide safety training to all employees about how to prevent and treat heat-related injuries and illnesses at least annually (yearly), and upon hiring for new employees. This training must be completed by April 20th of each year after 2022 (and by May 31, 2022). Additionally, supervisors and other employees who have any roles or responsibilities related to the employer's heat safety precautions must be trained on those roles or responsibilities.

This safety training must be provided in an employee's primary language if they are not fluent in English,<sup>17</sup> and must address the following topics:

- a. Environmental and personal risk factors for heat illness, including the added burden of heat on the body from exertion, clothing, and gear;
- b. The importance of acclimatization in the first days of work in heat, drinking water, and quickly reporting their or others' signs or symptoms of heat illness or injury;
- c. Different types, signs, and symptoms of heat illness, including self-monitoring, and how signs or symptoms can progress from mild to serious or life-threatening;
- d. Basic first aid (including first aid that can be performed by the employees themselves), and the available emergency responses to heat illness;<sup>18</sup> and
- e. The requirements of Rule 3 (providing heat illness and injury precautions) and Rule 5.1 (prohibiting retaliation and interference with rights) of the [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, which may be satisfied by providing employees with:
  - a copy of the "Agricultural Labor Rights and Responsibilities Poster," [INFOs #12A-12D](#), or another document satisfying Rule 5.2 (on posted notice of rights, see [INFO #12D](#)), and
  - site-specific information about how the employer is complying with Rule 3, e.g., explaining how the employer is providing required water, shade, and break time, as well as its safety and emergency procedures.<sup>19</sup>

<sup>15</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.5.4.

<sup>16</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.5.3.

<sup>17</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.6.4. An employer may ask the Division for help in obtaining materials in an employee's native language. [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.6.4.

<sup>18</sup> Employers can provide the information in items (a)-(d) with training based on any of the following heat safety programs, or another program with comparable information ([Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.6.3):

- "Heat Illness Prevention Training Guide, A Lesson Plan for Employers," published by the Occupational Safety and Health Administration ([www.osha.gov/index.php/heat-exposure/resources](http://www.osha.gov/index.php/heat-exposure/resources));
- "Heat Education and Awareness Tools (HEAT) Facilitator's Guide," by University of Washington Pacific Northwest Agricultural Safety and Health Center (in English & Spanish: [www.deohs.washington.edu/pnash/heat-toolkit](http://www.deohs.washington.edu/pnash/heat-toolkit)); or
- "Heat Illness Prevention Employer Training Discussion Guides and Visual Aids," by University of California Davis Western Center for Agricultural Health & Safety (in English & Spanish: <https://aghealth.ucdavis.edu/training/heat-illness>).

<sup>19</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 3.6.3.

- 6. Provide Fans For Employer-Provided Housing:** If at any point in a calendar year, the increased risk condition of a worksite temperature of at least 95 degrees is “reasonably expected” to occur, or actually occurs, employers are required to provide employees with fans for all sleeping quarters (e.g., bedrooms or multi-bed dormitory rooms) in employer-provided housing.<sup>20</sup>

### **SHORT-HANDLED HOE BAN; HAND-WEEDING/-THINNING RESTRICTIONS; GLOVES & KNEE PADS**

**No Short-Handled Hoes.** Employers cannot require employees to use short-handled hoes, including long-handled hoes that have been modified to have short handles.<sup>21</sup>

**Stooped, Squatting, or Kneeling Hand-Weeding/-Thinning “Strongly Disfavored”; Only Limited Types of Hand-Weeding and Hand-Thinning Allowed.** Weeding or thinning in a stooped, kneeling, or squatting position with a short-handled tool, or by hand, is “strongly disfavored,” unless there is no suitable long-handled tool or other appropriate way to perform the work. Hand-weeding/-thinning is allowed in only limited situations:

- Stooped, squatting, or kneeling hand-weeding that is “incidental to” other work (i.e., this hand-weeding work takes up 20% or less of the worker’s weekly work time);
- Hand-weeding or hand-thinning of high density plants that are spaced less than 2 inches apart;
- Hand-weeding or hand-thinning of a commodity for which the employer has a certification showing that the commodity meets the United States Department of Agriculture’s National Organic Program;
- Hand-weeding, hand-thinning, or hand-tending of seedlings or commodities in tubs or planters of up to 15” openings;
- Seeding, planting, transplanting, or harvesting by hand or with a hand tool;
- Hand-weeding, hand-thinning, or hand-tending the soil-exposed area surrounding commodities that are grown using polyethylene film or plastic mulch (but not spaces between rows of plants).<sup>22</sup>

As noted in [INFO #12B](#), hand-weeding or hand-thinning workers have an additional 5 paid rest period minutes.

**Limited Allowances and Certificates of Variance for Hand-Weeding and Hand-Thinning.** The Colorado Department of Agriculture (CDA) has [issued rules](#) on the following topics:

- “Allowances for and limitations to hand-weeding and hand-thinning for agricultural employers actively engaged in the transition to certified organic agriculture”; and
- A process by which agricultural employers can “seek a certificate of variance [from the CDA] [...] that allows for more than occasional or intermittent hand-weeding” (i.e., for hand-weeding that exceeds 20% of the worker’s weekly work time), where the employer shows that (1) the work does not risk injury to workers or involve unnecessary stooping, kneeling, or squatting; and (2) there is no alternative or existing exemption suitable and appropriate to the employer’s production and operation size.<sup>23</sup>

**Gloves and Knee Pads.** Employers must provide protective gloves and knee pads, without cost or deduction, as needed for employees performing hand-weeding, hand-thinning, or hand-hot-capping work.<sup>24</sup>

### **ADDITIONAL PROTECTIONS DURING A PUBLIC HEALTH EMERGENCY**

As of the date of this INFO, a **COVID 19-related Public Health Emergency (PHE) is in effect.**<sup>25</sup>

<sup>20</sup> Agricultural Labor Conditions Rules, 7 CCR 1103-15, Rule 3.4.4.

<sup>21</sup> C.R.S. 8-13.5-201(9) (definition of “short-handled hoe”); -203(2)(a) (prohibiting use of short-handled hoe).

<sup>22</sup> C.R.S. 8-13.5-203(2).

<sup>23</sup> C.R.S. 8-13.5-203(2)(d), (e) (CDA rulemaking requirements and authority); [Rules Pertaining To Hand Weeding And Hand Thinning By Agricultural Workers](#), 8 CCR 1202-18.

<sup>24</sup> C.R.S. 8-13.5-203(4).

<sup>25</sup> PHEW defines a “public health emergency” as when “a public health order [is] issued by a state or local public health agency” or “a disaster emergency [is] declared by the Governor based on a public health concern.” C.R.S. 8-14.4-101(4). The state “disaster emergency” related to COVID-19 was declared by Governor Polis on March 11, 2020 (Exec. Order D 2020 003), and continued by later declarations through the date of this INFO. For example, the July 8, 2021 Executive Order “rescinds ... and restates” the original emergency declaration, but also “continue[d] the State’s disaster declaration and essential directives ... to continue COVID-19 response and recovery.” (Exec. Order D 2021 122, July 8, 2021). That Disaster Recovery Order has been continuously extended ever since. (E.g., Exec. Order D 2022 033, January 26, 2022, amending the Disaster Recovery Order and ordering that it otherwise “shall remain in full force and effect as originally promulgated”). For all state emergency orders, see <https://covid19.colorado.gov/public-health-executive-orders>.

**PPE and Whistleblower Complaints.** The ALRRA extends additional Public Health Emergency Whistleblower Act ([PHEW](#)) requirements to agricultural employment. PHEW protects employees' rights to (1) raise reasonable concerns about workplace violations of government health or safety rules, or otherwise significant workplace health or safety threats, related to a PHE; and (2) wear one's own personal protective equipment, if it provides a higher level of protection than equipment already provided by an employer.

As described below, PHEW also requires employers to provide minimum square footage to allow for social distancing in employer-provided housing. For more details about PHEW's protections, see [INFO #5](#).

**Additional Living Space.** During a PHE, PHEW requires employer-provided housing to meet the following minimum square footage requirements, as to each employee:

- single-occupancy housing — at least 80 square feet of combined sleeping and living quarters;
- multiple-occupancy housing — at least 100 square feet of sleeping quarters *and* at least 120 square feet in areas used for “combined purposes,” such as eating and preparing meals;
- all housing — screened windows open to the outdoors, or an air filtration system; and
- range workers — a single occupancy mobile housing unit, regardless of [20 C.F.R. 655.235](#) variances.<sup>26</sup>

**Colorado Department of Public Health and Environment (CDPHE) Inspection Access.** Employers must let the [CDPHE](#) access the worksite to inspect and ensure compliance with PHE guidelines and orders.<sup>27</sup>

**PHE Safety Training; Worksite PHE Safety Notice.** During a PHE, an employer must provide (1) training about PHE-related workplace safety precautions and protections, and (2) materials (“posters and pamphlets in English, Spanish, and any other relevant languages”) providing federal and state workplace guidance about the PHE and contact information for the [Colorado Legal Services Migrant Farmworker Division](#).<sup>28</sup> These materials must be posted and provided:

- at the worksite,
- in any employer-provided housing, and
- in any places where labor law or other information is typically posted.<sup>29</sup>

An employer may comply with the PHE training requirements by training workers consistent with federal Office of Safety and Health (OSHA) recommendations and CDPHE recommendations applicable to agriculture, and with the PHE guidance requirements by providing them with OSHA and CDPHE materials about the same topic. See [INFO #12D](#) for more information.

**Complaints About Violations of PHEW-Related Rights.** When the Division receives a complaint about PHEW violations, it will review the complaint and consider whether to investigate it fully, in light of Division resources and workload. The Division will notify parties whether it decides to investigate fully or not; if it does not, its notice authorizes the complainant to pursue the claim in court.

If the Division accepts a PHE-related housing complaint and finds a violation, remedies will depend in part on what good-faith efforts the employer has undertaken to date, the reasons for the delay in compliance, and the completion timeframe for any housing still being modified or constructed.

### **For Additional Information**

Visit the Division's [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).

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<sup>26</sup> C.R.S. 8-14.4-109(1)(b).

<sup>27</sup> C.R.S. 8-14.4-109(1)(c).

<sup>28</sup> C.R.S. 8-14.4-109(1)(d); Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving ([WARNING Rules](#)), 7 CCR 1103-11, Rule 4.2.2(D) (effective March 2, 2022).

<sup>29</sup> C.R.S. 8-14.4-109(1)(e); Colorado WARNING Rules, 7 CCR 1103-11, Rule 4.2.2(A)-(C). If these materials are damaged or removed, they must be replaced within 48 hours. Colorado WARNING Rules, 7 CCR 1103-11, Rule 4.2.2(B).