



6 Biggest Changes to Expect As OSHA Moves to Overhaul Fire Brigade Rule to Cover Emergency Response Workers

Insights

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Federal workplace safety officials are one step closer to completely overhauling the rules covering fire brigades and broadly expanding them to include emergency response workers – but an open question remains about when the new administration will finalize them. The Occupational Safety and Health Administration (OSHA) released a proposed rule in February 2024 that aims to shore up protections and modernize the rule, converting it into a broader and more detailed standard. The comment period for the proposed rule recently ended, so we would normally expect to see movement from the agency in the near future. What are the six biggest changes this impending new standard might bring and what can you expect in the near future?

Quick Background

In 1980, OSHA enacted the Fire Brigades (29 C.F.R. 1910.156) standard to protect firefighters – but that rule did not cover other emergency responders. Since that time, the standard has seen few updates. Following the September 11 attacks, however, the agency reevaluated its protections of emergency responders and identified gaps that it believed needed to be filled in.

In February 2024, OSHA published its notice of proposed rulemaking of the Fire Brigades standard, aiming to turn it into a broader Emergency Response standard. The post-hearing public comment period for this proposed standard ended on January 17. OSHA is now reviewing the comments and could adopt the proposed standard, adopt a revised version, or allow additional public comments before finalizing.

6 Biggest Changes to Expect

Here are the six biggest takeaways you should track as the rule heads towards finalization:

- **Expanded Scope** – The proposed rule explicitly expands the scope of the rule and would apply to emergency responders and disaster recovery workers beyond firefighters. This would include emergency medical service workers and technical search and rescue personnel, along with public and municipal fire departments located in states with OSHA-approved state plans. With respect to volunteer emergency responders, federal principles would apply. OSHA has stated that “all volunteer emergency responders who are currently excluded from coverage under the OSH Act should expect that they will continue to be excluded from the scope of this rulemaking.”

For volunteer emergency responders in states with OSHA-approved state plans, state law would apply. Therefore, volunteer emergency responders may be considered employees under any new standard enacted by the applicable state.

- **Emergency Response Program Requirement** – Employers whose primary business is in providing emergency response services are referred to as Emergency Service Organizations (ESOs) while employers engaged in industries that require employees to provide emergency services as a collateral duty, are called Workplace Emergency Response Employers (WEREs). The proposed rule recognizes the differences in exposure to workplace hazards for ESO and WERE employees by applying fewer requirements of WEREs. Still, both WEREs and ESOs must develop Emergency Response Programs (ERP), a written program to ensure that the WERE or ESO can safely respond to emergency and non-emergency incidents.
- **Incorporation of Voluntary Standards** – The proposed rule attempts to modernize the Fire Brigade standard by referencing and including multiple National Fire Protection Association (NFPA) and American National Standards Institute (ANSI) standards. Although these standards are often utilized as best practices in the industry, incorporating them by reference would make them law. In addition, because these standards are usually updated every few years, employers would be required to keep up with the changes or be out of compliance with the new standard.
- **Medical and Physical Fitness Criteria** – One of the most controversial provisions of the proposed rule is the establishment of medical and fitness requirements for responders. Under the proposed rule, ESOs must, among other things, establish and implement requirements for medical exams, physical fitness for service, and a health and fitness program. The rule requires that responders pass a medical exam every year or two years, depending on their exposure to hazards. Smaller fire departments have expressed concern as they would need to have sufficient funds to ensure their workers get these exams. There have also been concerns that team volunteer responders would have difficulty meeting the physical fitness requirements.
- **Recordkeeping and Compliance** – The proposed rule increases the obligation to create and maintain various documentation related to emergency preparedness and planning. These include development of written emergency incident standard operating procedures, an Incident Management System (IMS) to manage all emergency incidents, and Pre-Incident Plans (PIP) for significant structures or locations where emergencies might occur.
- **Vehicle Preparedness** – The proposed rule includes requirements to ensure that vehicles used by responders are compliant with an ESO's developed standard operating procedures. There are training requirements for vehicle operators and standard operating procedures must address specific means to ensure safe driving of such vehicles in non-emergency situations.

What's Next?

As noted above, we are now waiting to see whether the proposed rule will be fully adopted, revised, or opened up for further comment. It is unclear when OSHA will take action with respect to the proposed standard, however, since the Trump administration has put a hold on the issuance of any

new rules pending further review. The soon-to-be head of OSHA, David Keeling, is expected to bring a different regulatory focus than his predecessors, and it is unclear how highly he and other new leaders prioritize this standard.

Conclusion

The Senate confirmation process for Keeling will provide further insight into his policy priorities, and we'll provide updates as warranted. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have any questions, contact the authors of this Insight, your Fisher Phillips attorney, or any member of our Workplace Safety team.

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