



What You Need To Know About California's New Emergency Wildfire Smoke Protection Regulation

Insights

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California has been wrought with devastating wildfires in recent years. Last year, in fact, the state suffered one of its most destructive wildfire seasons ever recorded; there were over 8,500 wildfires and the largest area of acreage was burned. The good news, for now, is that Cal Fire has reported that wildfires are down 90% in 2019.

Even with this recent decline, in anticipation of continued fires for the foreseeable future, the California Occupational Safety and Health Standards Board (Cal-OSHA) developed a set of rules to protect outdoor workers from the harmful effects of wildfire smoke. On July 29, the emergency regulation went into effect and will be in place through January 28, 2020, with two possible 90-day extensions.

What are an employer's obligations under the new regulation?

In general, you now must monitor the Air Quality Index (AQI) at your worksite and take certain steps to identify and reduce exposure for workers exposed to wildfire smoke when the AQI reaches certain levels. You must take the following actions under the regulation:

- Monitor the AQI at your worksites for fine particulate matter (PM 2.5);
- If the AQI for PM 2.5 is greater than **150** and you “reasonably anticipate” that employees will be exposed to wildfire smoke, you must reduce exposure to the smoke;
- If feasible, you may reduce exposure by relocating employees to enclosed buildings with filtered air or to another outdoor location where the AQI for PM 2.5 is 150 or lower;
- If it is not feasible to reduce smoke exposure by relocation, you **must** provide respirators (such as N95s) for voluntary use, and encourage their use;
- If the AQI exceeds 500, then respirator use is **mandatory**, and employees must be fit tested and medically evaluated.

Additionally, you must establish a formidable system to communicate AQI level information to employees, including information regarding protective measures and encouragement of employees to inform you if they feel air quality has worsened or if they have suffered adverse symptoms resulting from smoke exposure.

Further, you must provide training on the regulation. This includes informing employees of the effects of wildfire smoke, how to obtain AQI information, how to obtain medical treatment, employee protection procedures, and how to properly and safely use respirators.

The new regulation primarily affects employers in agriculture, construction, maintenance, landscaping, and other similar industries. Workplaces exempt from the new regulation include enclosed buildings or vehicles that have air filter systems, firefighters engaged in firefighting, or employees with short-term exposure to the smoke (less than one hour). However, employers that employ those who may spend a cumulative hour or more outside (e.g., warehouse or delivery jobs in which employees move in and outdoors) must comply with the regulation.

Complying with the regulation and best practices

If you are a California employer and have not started taking steps to comply with this regulation, you should do so immediately, given that we are in the midst of wildfire season and an emergency event may develop at any time. Initially, you should understand and begin to monitor AQI information, develop the required training, and obtain respirators.

When obtaining respirators, you must be mindful of current federal OSHA regulations. According to OSHA, N95s and similar respirators do not include simple paper masks or dusk masks (and are therefore not included in Respirator Protection Program and subject to its many requirements). N95s are "disposable respirators," and must be discarded after use or when they become damaged or soiled. Respirators must be examined before each use, and if they fail an inspection or are otherwise defective, must be removed from service. These regulations will likely affect the number of respirators obtained by employers, and how you care for and maintain your equipment.

Service Focus

Workplace Safety and Catastrophe Management