

Seeing Smoke Ahead: Cal/OSHA Proposes Emergency Regulation to Protect Workers from Wildfire Smoke Exposure



California wildfires have become more frequent and more intense. These wildfires and the smoke they generate pose risks to worker safety. In response to the poor air quality California experienced during last year's fires and in recognition of the fact that intense fires will likely continue, the California Division of Occupational Safety and Health (Cal/OSHA) issued a proposed emergency regulation addressing smoke exposure. A public meeting to discuss the proposed regulation was held on May 8, 2019.

Cal/OSHA's justification for the emergency regulation is noteworthy. In part, Cal/OSHA has justified the need for this regulation because of the changing climate. On January 8, 2019, Governor Gavin Newsom issued [Executive Order N-05-19](#), which stated, in part, that "the reality of climate change, persistent drought, warmer temperatures, and more severe winds has created conditions that will lead to more frequent and destructive wildfires." In seeking authority to adopt these emergency regulations, Cal/OSHA [cited](#) this Executive Order.

Proposed Regulation

The proposed regulation titled "[Protection from Wildfire Smoke](#)" would apply to indoor and outdoor workplaces where the Air Quality Index (AQI) for PM2.5 is greater than 150 and a wildfire smoke advisory has been issued or there is a realistic possibility that employees may be exposed to wildfire smoke. An AQI for PM2.5 of 150 or greater is considered "Unhealthy."

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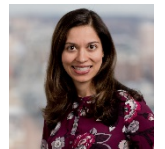
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The proposed regulation would require employers to monitor air quality, communicate hazards about smoke exposure, train employees on topics of smoke exposure, and control harmful exposures to employees.

Identification of Harmful Exposures

An employer would be required to check AQI forecasts and current AQI measures whenever an employee “may reasonably be expected to be exposed to an AQI greater than 150[.]”

Communication Program

An employer must establish and implement a system for communicating wildfire smoke hazards to its employees. This communication program is required to inform employees of:

1. The current PM5 levels.
2. Changes in conditions that may lead to a worsening of air quality.
3. Protective measures available to employees to reduce their wildfire smoke exposures.

The communication program must also encourage employees to inform the employer of worsening air quality, changes in conditions that may lead to a worsening of air quality, and any adverse symptoms like resulting from wildfire smoke exposure, such as difficulty breathing or asthma attacks.

Employee Training

The employer must provide employees with effective training on many topics, including:

1. The health effects of wildfire smoke.
2. How employees can check the AQI at their location.
3. The importance, limitations, and benefits of using a respirator when exposed to wildfire smoke.
4. How to properly use and maintain the respirators.
5. What actions to take if an emergency evacuation of the work area becomes necessary.

The proposed regulation would apply to indoor and outdoor workplaces where the AQI for PM2.5 is greater than 150.

The training must also cover other topics, such as informing employees of the requirements of the proposed regulation.

Controlling Harmful Exposures to Employees

The proposed regulation would also require employers to control harmful exposures to employees by implementing engineering and administrative controls. However, the proposed regulation does include one important exception. An employer is not required to implement engineering controls for employees who are exposed to PM2.5 correspondence to an AQI exceeding 150 for less than one hour during a shift. If air quality is considered “Very Unhealthy” (AQI 201 to 300) or “Hazardous,” (AQI 301 to 500) the employer must provide respirators for its employees.

Exemptions

Several workplaces are exempt from the proposed emergency regulation, including firefighters engaged in wildland firefighting, emergency response personnel performing rescue and evacuation, and enclosed

buildings or vehicles with a filtration system to limit employee exposure. Additionally, an employer is exempt if the employer demonstrates that the concentration of PM2.5 in the air does not exceed a concentration that corresponds to an AQI of 150.

Impact

California's Occupational Safety and Health Standards Board recognizes that smoke can blow hundreds of miles away from a fire, and if this proposed regulation is adopted, employers throughout California will be obligated to train employees and provide respirators for employee use when air quality is sufficiently poor. This is potentially a significant change for employers, as employers who previously did not have to provide respiratory protection for employees may now be obligated to do so, consistent with Cal/OSHA's "Respiratory Protection" regulation, 8 CCR § 5144. As an example, the proposed regulation explains when fit testing and medical evaluations, components of a respiratory protection program, are required. As summer nears and wildfire season approaches, employers should monitor whether this regulation is adopted.

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