

When There's Smoke...California's New Emergency Wildfire Smoke Protection Regulation and What Employers are Required to Do

Newmeyer Dillion

California employers need to pay heed to the recently announced California Division of Occupational Safety and Health Standards Board (Cal/OSHA) emergency regulation related to their duty to protect employees from the potential harm caused by wildfire smoke. As of July 29, 2019, employers are required to actively monitor their local Air Quality Index (AQI) and take steps to protect their employees from the harmful particulate matter contained within wildfire smoke.

Which Workplaces Are Impacted?

The regulation applies to all workplaces exposed to wildfire smoke with an AQI level of 151 or greater (ranging from "unhealthy" to "hazardous"). "Exposed" workplaces are those that are not in enclosed buildings, structures, or vehicles with mechanical ventilation and the ability to close all windows and doors. Outdoor occupations including construction, agriculture, landscaping, maintenance, commercial delivery, and others that expose the worker to the outside air for more than one hour will be the most impacted by this new regulation, although firefighters engaged in fighting wildfires are expressly exempt from the statute.

What If I Have A Potentially Exposed Workplace?

Employers with outdoor workplaces that are exposed to wildfire smoke are required to monitor the AQI before each shift, and "periodically throughout the day," all to ensure that the Air Quality Index for PM2.5 (particulate matter with an aerodynamic diameter of 2.5 micrometers or smaller) remains below 151. This can be done by visiting certain governmental websites, including U.S. Environmental Protection Agency's AirNow website (www.airnow.gov), which allow for regular email alerts to be issued to the employer. An employer with a potentially exposed workplace must also set up a communication system capable of communicating to all affected employees (in a language readily understood) the status of wildfire smoke hazards. The communication system must also provide the employees a process to inform the employer of worsening air quality and/or any adverse symptoms that they may be experiencing (e.g., asthma or chest pain). Finally, employers are required to add to their Injury and Illness Protection Program (IIPP) the provision

of effective training and instruction (i.e., approximately 15 minutes) regarding: (1) the health effects of wildfire smoke; (2) the right to obtain medical treatment without fear of reprisal; (3) how employees can obtain the current AQI for PM2.5; (4) the requirements of this regulation; (5) the employer's communication system regarding wildfire smoke; (6) the employer's methods for protecting employees from wildfire smoke; (7) the importance, limitations, and benefits of using a respirator when exposed to wildfire smoke; and (8) the proper use and maintenance of respirators.

The Required Provision of Respiratory Protective Equipment:

Employers with exposed workplaces are required to provide effective NIOSH-approved respirators (e.g., N95 filtering facepiece respirators) when AQI for PM2.5 levels are 151-200 (unhealthy), 201-300 (very unhealthy), or 301-500 (hazardous). The N95 respirator typically costs less than a dollar per mask and can be easily purchased online. Employers are also required to clean, store, and maintain these respirators for times of need. Employees are free to decide whether to use a respirator when the AQI for PM2.5 level is between 151-500, although employers must be prepared to offer the equipment at an AQI level of 151 or higher. Use of the respirator by an employee exposed to an AQI for PM2.5 level that exceeds 500, however, is required by law.

What Should Potentially Exposed Employers Do Now?

Employers should immediately begin supplementing their IIPP platforms to include this regulation's proscribed training regarding wildfire smoke. Companies should also develop an adequate monitoring and communication plan regarding wildfire smoke hazards and effectively train their supervisors on the same. Finally, acquiring an adequate supply of N95 filtering respirators now will help ensure that employers are prepared for the next wildfire.