

CAL/OSHA Proposes Emergency Regulation on Smoke-Protection after Destructive Wildfire Season

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In the wake of the most destructive wildfire season in California history, California's Department of Industrial Relations, Division of Occupational Safety and Health ("DOSH"), has issued a [proposed emergency regulation](#) intended to protect workers from wildfire smoke. On April 15th, 2019, DOSH released the proposed regulation and scheduled a [hearing to discuss the regulation](#) for May 8th, 2019 in Oakland.

The proposed regulation covers both indoor and outdoor workers exposed to an air quality index ("AQI") for particulate matter 2.5 ("PM2.5") exceeding a level of 150, and where a wildfire smoke advisory has been issued or there is a "realistic possibility that employees may be exposed to wildfire smoke." However, the regulation sets out exemptions for the following types of workplaces and operations:

1. operations with enclosed structures "where the air is filtered by a mechanical ventilation system and employee exposure to outdoor or unfiltered air is effectively limited;"
2. operations involving enclosed vehicles in which the air is filtered by a cabin air filter;
3. operations where the employer demonstrates that the AQI for PM2.5 does not exceed 150; and
4. firefighters and emergency response personnel.

Under the proposed rule, employers would be required to take protective measures

when the AQI for PM2.5 exceeds a level of 150, which falls into the “unhealthy” category according to the U.S. Environmental Protection Agency. The regulation requires employers to identify harmful exposures “whenever an employee may reasonably be expected to be exposed to an AQI of greater than 150[.]” In such instances, the employers would be required to have a system in place for communicating smoke hazards to its employees. Additionally, the proposed regulation calls for employers to develop an effective training program regarding the hazards of wildfire smoke and how to combat those hazards. Finally, the proposed regulation would require employers to develop engineering and administrative controls to address wildfire smoke, including providing employees with respirators.

Under California’s emergency rulemaking process, DOSH must provide notice of the regulation before submitting it to the Office of Administrative Law (“OAL”) for approval. After providing notice, interested parties have five calendar days to submit comments. OAL then has ten calendar days in which to review the emergency regulation and make a decision. If approved, the emergency regulation will go into effect for 180 days during which time DOSH will proceed with the normal rulemaking process, including a more robust public comment period.

Given the abbreviated emergency regulation process, employers in California should be prepared to comply with the proposed regulation this wildfire season, which is rapidly approaching.

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