

## Washington Issues Wildfire Smoke Emergency Rule

The Department of Labor & Industries (L&I) filed a new emergency rule on July 16, 2021, that provides increased protection to employees who are exposed to wildfire smoke. The rule took effect immediately, though enforcement for various provisions is slightly delayed.

### Who Is Affected?

The emergency rule applies to workplaces where an employer "should reasonably anticipate that employees may be exposed to wildfire smoke." Notably, its reach is not limited to agricultural workers, construction workers, or other employees who may traditionally be the target of such rules. The rule's language can encompass, for example, restaurants with outdoor seating, outdoor venues hosting events, like baseball and soccer stadiums, or other similar workplaces.

However, there are a few exceptions to the rule's scope. Specifically, it does not apply to workplaces with the following:

- Enclosed buildings or structures in which employers can ensure windows, doors, and other openings are closed (other than as necessary to enter and exit)
- Enclosed vehicles in which air is filtered and the employer ensures windows, doors, and other openings are closed (again, except when necessary to enter or exit the vehicle)
- Workspaces where employees are exposed to high concentrations of particulate matter or poor air quality for a total of one hour or less during a shift

Firefighters engaged in wildland firefighting are also exempt.

### What Is Required?

Particulate matter less than 2.5 micrometers in diameter (PM<sub>2.5</sub>) is one of the most concerning hazards associated with wildfire smoke because the particles are small enough to reach deep into the lungs, exacerbating existing health conditions like asthma, and negatively affecting other critical functions.

**Measurement.** Under the new rule, employers are required to determine the level of PM<sub>2.5</sub> at their workplace(s). This can be done using one of the web-based sources identified by L&I<sup>[1]</sup> or by directly measuring PM<sub>2.5</sub> at the worksite. The rule also includes measuring benchmarks based on the Washington Air Quality Advisory Level scale (WAQA) and the Air Quality Index (AQI).

**Response.** Employers must develop emergency communication protocols and engineering and administrative controls to implement should PM<sub>2.5</sub> levels exceed 55.5 g/m<sup>3</sup> (or WAQA 173 or AQI 151). This includes a requirement that employers provide respiratory protection to employees whenever air quality or contamination reaches such levels. Employees may use the provided protection on a voluntary basis. Employers are also required to allow medical care for employees who display symptoms of illness related to wildfire smoke exposure.

**Training.** Finally, the rule requires employees—both supervisors and other staff—who may be exposed to such poor air quality to be trained on the hazards of wildfire smoke and the employer's plan to ensure workers are protected.

Though not technically required under the rule, L&I also encourages employers to take steps to reduce employee exposure at lower PM2.5. This is particularly important to protect employees with asthma or other similar conditions.

The emergency rule took effect July 16, 2021, immediately upon its publication. However, employers are afforded a grace period before enforcement begins. Specifically, enforcement of the following elements will not occur until the dates listed below:

<b>Requirement</b>	<b>Enforcement Date</b>
Exposure controls	July 23, 2021
Provide respiratory protection	July 23, 2021
Train employees	August 2, 2021

### **Takeaways for Employers**

The first, and most urgent, step in complying with the new rule is ensuring that controls are in place to limit employee exposure to wildfire smoke. Measures designed to eliminate or reduce exposure may include:

- Moving work to enclosed buildings or vehicles where the air is filtered
- Reducing work intensity
- Providing additional rest periods

Employers should develop a plan regarding when and how they will measure air quality in the workplace, as well as plans to (1) communicate with employees when air quality levels rise to dangerous levels and (2) implement protective protocols like those identified above.

Finally, employers should make a plan to train employees on the dangers of smoke exposure.

Employers can learn more on [L&I's website](#).

### **Endnotes**

[1] Such resources include the [EPA's AirNow website](#) and the [Department of Ecology's Air Monitoring Network](#)

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