

Updates

August 10, 2021

Oregon Issues Rules on Wildfire Smoke Protection

Following up on [the new excessive heat rules](#), Oregon has issued temporary rules to protect employees from wildfire smoke, which will remain in place for six months while the Oregon Occupational Safety and Health Administration (OSHA) drafts permanent rules. The rules contain training and notification requirements and, notably, respirator requirements. The rules apply whenever employees will be exposed to wildfire smoke where the ambient air concentration for fine particulate matter, such as that often produced in forest fire smoke, with a diameter less than 2.5 micrometers in size often referred to as PM 2.5, results in an Air Quality Index (AQI) of 101 or above.

The rules specifically exempt workers in enclosed buildings and structures with mechanically filtered air as long as the employer ensures that all windows and exterior openings are closed except when necessary to enter and exit. Similarly, the rules exempt employees that are in vehicles with a cabin air filter and windows and doors are kept closed except as necessary. However, mass transportation, such as buses and light rails where doors are frequently opened to board and disembark passengers, are not exempt from the rules.

Wildland firefighters, rescue, utilities, communications, and medical operations involved in aiding emergency operations or firefighter operations are exempt from training requirements but are not exempt from notification and exposure control requirements.

The rule covers three areas: training, communicating wildfire smoke hazards, and mitigation measures.

Training

Beginning August 16, 2021, unless an employer plans to suspend operations whenever the AQI is 101 or above, covered employers must provide training. Training will cover such areas as symptoms and health effects of wildfire smoke exposure, identifying those who might be particularly sensitive, and an employee's right to report exposure without retaliation. Employees must also be trained on the procedures supervisors will follow when an employee exhibits symptoms of wildfire smoke exposure, how employees can get information on ambient air concentration or AQI levels, how to operate and interpret the employer's air quality monitoring devices, the methods to be used to protect employees from wildfire smoke, and the importance, methods, limitations, and benefits of using a filtering facepiece respirator. Training materials are to be available from Oregon OSHA by August 6.

Communication

Employers must develop and implement a system to communicate wildfire smoke hazards to employees. Employees must be notified when poor air quality reaches three different levels: AQI 101, 201, and 501. Employees must also be notified as AQI drops below levels requiring protective measures and encouraged to inform the employer when air quality improves or worsens.

Controlling Exposure

Oregon's temporary rules mandate the provision and, in some circumstances, use of respirators. Whenever the AQI is 101 or above, the employer must be able to provide, at no cost to employees, a sufficient number and variety of sizes of National Institute for Occupational Safety and Health (NIOSH)-approved respirators to employees wherever they are located and exposed. The respirators must be readily available for voluntary use. For the 2021 wildfire season, KN95 masks will be allowed to substitute for NIOSH-approved filtering facepiece respirators unless the AQI exceeds 501.

Employers must use any engineering or administrative controls possible to reduce exposure below AQI 201 whenever possible. This could be accomplished by providing enclosed buildings, or vehicles with filtered air, relocating work to another location where the air concentration is less than AQI 201 or changing work schedules to seek better air quality.

When employee exposure is at AQI 201 or above, even with application of engineering or administrative controls, the employer must ensure employees wear NIOSH-approved respirators. Where the respirators are used exclusively to protect employees from wildfire smoke, the employer does not need to implement a full respiratory protection program and may use the wildfire smoke respiratory protection program described in the appendix to the rules. When the AQI is 501 and NIOSH-approved respirators are necessary, the employer must provide a complete Respiratory Protection Program provided for under OSHA rules.

Bottom Line

There are three main immediate takeaways. First, employers must be ready to begin training on August 16, 2021. Second, employers must establish a plan of communication regarding air quality and gaining access to air quality information before employees are exposed to AQI 101 or above. Lastly, employers will need to have, at a minimum, KN95 masks available for all employees subject to wildfire smoke and, where there is potential for significant poor air quality, NIOSH-approved respirators.

© 2021 Perkins Coie LLP

Authors

Explore more in

[Labor & Employment](#) [Corporate Law](#)

Related insights

Update

[**California Court of Appeal Casts Doubt on Legality of Municipality's Voter ID Law**](#)

Update

[**February Tip of the Month: Federal Court Issues Nationwide Injunction Against Executive Orders on DEI Initiatives**](#)