

May 10, 2019

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Department of Industrial Relations

Via email

Dear Eric, Amalia, Chris and Corey,

Thank you again for all your work developing the emergency standard to protect workers from wildfire smoke. We also greatly appreciate the provision of translation services at the advisory meeting this week.

The comments below on the discussion draft supplement the comments we submitted on April 26th.

5141.1(a) Scope

We are perplexed by employers' claims that the scope is vague because section (a)(1) clearly applies only to the AQI and wildfire smoke advisories applicable to the geographic area of the workplace.

We oppose employer representatives' recommendation to use distance from fire to determine whether a workplace is subject to the standard because the distance smoke travels varies widely depending on weather conditions. We also oppose the employer representatives' proposal to give employers a 12 hour grace period for compliance after a fire starts because workers need immediate protection from wildfire smoke and impacts of wildfire smoke on air quality are generally readily apparent.

We also oppose the addition of health care workers to the exemption in section (a)(2)(E). Hospitals and other health facilities are required to have emergency plans, which include evacuation. They should incorporate protecting employees from exposure to smoke in their periodic training and other preparation.

We also oppose the suggestion that "realistic possibility" be taken out of this draft. The term "realistic possibility" was a negotiated part of AB 2774 from 2010. This bill redefined what "serious physical harm" meant and was required to ensure that Cal-OSHA's definition of "serious physical harm" was at least as effective as Fed-OSHA's definition in the Fed-OSHA Operation Manual. "Realistic possibility" is part of that definition and has become an accepted term of art at Cal-OSHA and the OSHA Appeals Board. There is no justification to remove it from this draft.

(b) Definitions

In regards to the definition of effective filtration, the permanent regulation should address how employers and building operators should evaluate ventilation systems and develop procedures for optimizing protection for wildfire smoke. A definition of effective filtration could be part of those requirements.

(c) Identification of harmful exposures

The process could be clarified by specifying that checking the AQI for the zip code or city where employees are located is an adequate method for determining the AQI for a work area. While air monitors are fairly far apart in some areas, during fires additional portable monitors are often brought to an area to help determine AQI at a more localized level.

Assessing the AQI before a shift starts and periodically during a shift is appropriate and does not constitute a constant monitoring duty. The regulation should require training for any employees who will be responsible for monitoring the AQI. Existing work safety regulations already give employers the latitude to delegate the task of periodically checking AQI levels to employees.

(d) Communication

A means for employees to communicate concerns to their employer or supervisor should be required.

(e) Training

Merely providing a copy of Appendix A to workers is not an adequate substitute for training, especially for workers who have low literacy in English or Spanish or who speak other languages, such as Indigenous languages. We also oppose changing the title of this section from training to instruction. We believe employers can provide abbreviated trainings on the very basics as spelled out in the standard and in our previous letters. We feel strongly that in-person training must be required in order to be truly effective, and there must be an opportunity for employees to ask questions.

(f) Control of harmful exposures to employees

We believe that this section should retain a requirement to utilize feasible engineering and administrative controls. While these control measures may not be feasible in some workplaces, others may be able to effectively reduce exposures for some or all workers.

(1) Engineering Controls

Employers should be required to implement engineering controls that are feasible under circumstances of a rapidly developing wildfire. Such controls could include using enclosed cab vehicles and provide filtered enclosed areas for certain operations that would reduce exposure to smoke. Other control measures include work practices such as permitting valet parkers at hotels to wait inside a lobby served by a ventilation system, rather than requiring them to stand outside in the smoke between customers.

(2) Administrative controls

Employers should be required to implement administrative controls such as scheduling work in areas with better air quality and scheduling as much indoor work as feasible for employees who do both indoor and outdoor work, reducing work intensity and providing additional rest breaks. Additional rest breaks are advisable because both high PM2.5 air levels and using respirators increase the effort needed to perform physical labor.

3) Respiratory Protection

We strongly support the requirement for requiring fit-testing of respirators, including filtering face piece respirators, when the AQI for PM 2.5 is 301 or greater, an air level classified as hazardous to health. Fit-testing is essential in these situations to provide workers enough protection to reduce exposures to levels “only” considered unhealthy for sensitive groups. Employers will either have to briefly postpone work to conduct the fit-testing. Employers operating in areas of high fire risk could choose to plan ahead and fit test workers ahead of time.

We disagree with the repeated statements made by people representing utility companies, where they stated that the emergency nature of their work should exempt them from any requirements under the standard. A specific example given was that most N95 respirators are not certified to withstand electric arc flash, and therefore are not appropriate for this use. This type of problem supports placing their respirator use under Section 5144 because it requires that “The employer shall select and provide an appropriate respirator based on the respiratory hazard(s) to which the worker is exposed and workplace and user factors that affect respirator performance and reliability.” It may be true that there are specific tasks for which an appropriate respirator may not be available, but employees may be able to use respirators for other tasks, thereby reducing overall exposure.

Further, workers whose assignments include work in evacuation zones come under the incident command structure. These employees should be proactively trained in emergency procedures and personal protective equipment appropriate to these tasks. If the Division feels it is necessary to exempt these workers, the exception should read “when the work is performed in the context of an incident command established by state or local agencies who are controlling the work area.”

We look forward to seeing the final proposed emergency regulation on or around July 1st.

Sincerely,

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