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Client Alert

Fire Season: Employers have a duty to protect their workforce

WHAT'S NEW: During the summer and fall months, the Western U.S. sees an increase in damaging wildfires. It is imperative that employers understand their responsibility to protect and keep their employees safe.

Employers should be aware that wildfire smoke may adversely affect the health of their workforce and take action to limit exposures when a wildfire is emitting smoke in and around their work environment. States like California and Oregon that regularly experience wildfires have standards for employers and we can derive guidance from those states.

The air quality index (AQI) measures the particulate concentration of pollutants in the air. Anything over 300 is considered very "hazardous" conditions and 500 is the maximum value.

THE HEALTH EFFECTS OF WILDFIRE SMOKE

According to NIOSH (National Institute of Occupational Safety and Health), wildfire smoke exposures can result in adverse health outcomes for workers, such as:

- Eye irritation, sore throat, wheeze, and cough,
- Asthma and chronic obstructive pulmonary disease (COPD) exacerbations,
- Bronchitis and pneumonia,
- Adverse birth outcomes, and
- Cardiovascular (heart and blood vessel) outcomes.

WHAT EMPLOYERS SHOULD DO

All employers have a general duty under OSHA to provide a work environment free from recognized hazards that are causing or are likely to cause death or serious physical harm.

If workers must work in areas with high levels of smoke, especially for long periods, or if a worker is sensitive to wildfire smoke and feels their health or safety is negatively impacted by smoke exposure, employers can implement the following to reduce smoke exposure:

- Relocate or reschedule work tasks to smoke-free or less smoky areas or times of the day,
- Reduce levels of physical activity, when possible, especially strenuous and heavy work,
- Require and encourage workers to take frequent breaks in places that are free from smoke, and
- Limit smoke exposure by making accommodations for workers to perform their duties indoors or in a location that reduces exposure to smoke, if possible. To create an indoor environment that reduces exposure to and protects workers from wildfire smoke, it is important that employers and building managers:
    - Install air cleaners equipped with a high-efficiency particulate air (HEPA) filter or electrostatic precipitators,
    - Ensure that windows and other building openings such as loading docks and bays are kept closed to reduce overall smoke exposure inside,

- Operate heating, ventilation, and air conditioning (HVAC) systems in the re-circulate setting or temporarily reduce the amount of outdoor air supplied to the building.

IF WORKERS NEED TO WORK OUTSIDE, WHAT EMPLOYERS SHOULD DO

The best practice is to start a process to acknowledge the wildfire smoke hazard and communicate and educate employees.

- Understand if employees need accommodations due to prior health issues and provide those accommodations if necessary.
- Ask your local Department of Health and/or fire stations for recommendations to protect your employees or how to obtain N95 NIOSH approved respirators.
  - https://www.health.ny.gov/press/releases/2023/2023-06-07_unhealthy_air_quality.htm
  - https://www.nj.gov/health/
  - https://www.media.pa.gov/Pages/Health-Details.aspx?newsid=1825
- Educate employees on the use of respirators and begin a voluntary respiratory protection program. A voluntary program is when the employee can choose to use respirators or N95 masks.
  - A NIOSH Approved® filtering facepiece respirator (FFR), like an N95® respirator, can be used to reduce exposure to airborne particulates from wildfire smoke. It is important to know that FFRs do not protect against gases, such as carbon monoxide.

IS PPE SUCH AS RESPIRATORS A REQUIREMENT FOR PROTECTING WORKERS?

No, an employer can adopt a voluntary respirator program which does not require all the facets of the comprehensive program by OSHA when their employees are not routinely exposed to hazardous air quality such as the current situation in the northeast.

If an employer wants to require the use of respirators, both California and Oregon provide good guidance. CA requires use of respirators when the AQI reaches 150 and OR requires them at 101.

The levels in the northeast certainly would warrant use of respirators for employees that are required to work outdoors.

- If an employer has an established respiratory protection program, it should use that program with workers exposed to this wildfire smoke, or
- If an employer chooses to make the respirators mandatory, it must comply with the OSHA standards on having a respiratory protection program. https://www.osha.gov/respiratory-protection. This includes medical evaluations, respirator fit testing, and training of the workers required to wear respirators. The typical respirators used are NIOSH Approved® filtering facepiece respirator (FFR), like an N95® respirator, which will reduce exposure to airborne particulates from wildfire smoke. It is important to understand that FFRs do not protect against gases, such as carbon monoxide.

Employers must understand that they have a duty to protect their employees from known hazards, and that the smoke from the wildfires presents a known hazard that employers must address.