

News You Can Use



Because You're Different

Emergency Regulations

Wildfire Smoke Protection Rules Take Effect Now

CAL/OSHA has issued emergency regulations that require employers of outdoor workers to take protective measures, including providing respiratory equipment, when air quality is significantly affected by wildfires.

The safety agency decided to start work on the new regulations after worker groups filed a petition asking it to step in and protect people working outside from unsafe air quality caused by wildfires.

Below is all you need to know about the new emergency regulations that are slated to take effect Aug. 8.

PROTECTION OPTIONS

When the AQI exceeds 150, employers with outdoor workers can implement:

Engineering controls

Such as providing enclosed structures where employees can continue working, or

Administrative controls

- Relocating workers,
- Changing work schedules,
- Reducing work intensity, or
- Giving them additional rest periods, or

Respiratory protective equipment

The employer must provide respirators to all employees for voluntary use, and encourage them to use them.

Respirators shall be NIOSH (National Institute for Occupational Safety and Health)-approved devices that effectively protect the wearers from inhalation of PM2.5, such as N95 filtering face-piece respirators. Respirators shall be cleaned, stored, maintained and replaced so that they do not present a health hazard to users.

Where the current AQI for PM2.5 is 501 or greater, respirator use is required.

What to expect

The draft of the regulations, which were approved in July, would require that employers take action when the Air Quality Index (AQI) for particulate matter 2.5 is more than 150, which is considered in the “unhealthy” range.

The protections would also be triggered when a government agency issues a wildfire smoke advisory or when there is a “realistic possibility” that workers would be exposed to wildfire smoke.

All California employers with “a worker who is outdoors for more than an hour cumulative over the course of their shift” would be required to comply with these regulations:

Check the Air Quality Index

Employers of outdoor workers must check the AQI at the worksite to see if it is above 150, which would require the employer to take protective measures for the workers. AQI can be checked in the following ways:

- The U.S. Environmental Protection Agency's [AirNow website](#).
- The California Air Resources Board [website](#).

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Human Resources

New Law Bars Hairstyle Discrimination

CALIFORNIA GOV. Gavin Newsom has signed legislation that will make it illegal for employers to discriminate against employees and job applicants based on their hairstyle if it is part of their racial makeup.

The law, known as the CROWN Act (Create a Respectful and Open Workplace for Natural Hair) amends the state Education and Government Code to define race or ethnicity as “inclusive of traits historically associated with race, including, but not limited to hair texture and protective hairstyles like braids, locks and twists.”

This broader definition of race means that natural hair traits fall under the context of racial discrimination in housing, employment and school matters.

The law could apply to anyone, but as legislation it was specifically introduced to stop instances of discrimination against black

employees over their natural hairstyles. There have been a number of high-profile incidents over the past few years where employees and students were discriminated against based on their hair:

- A sixth-grade Louisiana girl was expelled because her hair violated school policy.
- In October 2018, a wrestling official in New Jersey ordered a black wrestler to cut his dreadlocks if he wanted to compete.
- An Alabama woman sued her employer for discrimination after her employer had rescinded a promotion to another position because she had dreadlocks.

The new law “protects the right of Black Californians to choose to wear their hair in its natural form, without pressure to conform to Eurocentric norms,” Sen. Holly Mitchell (D-Los Angeles), who introduced the legislation, said in a prepared statement.

The takeaway

The law means that it will be illegal for employers to discriminate against someone because of their hairstyle if it's tied to their ethnicity and race.

Employees that fall into this category can sue their employer for discrimination based on race under California's Fair Employment and Housing Act.

You should update your employee handbook to include this definition of race in the employment discrimination section, and also train your managers and supervisors in the change.

Remember, discrimination cases can be costly, even if the employer wins in the end. There are legal fees, costs of witnesses and damage to reputation to contend with.

The best prevention for discrimination is to have rock-solid policies in place. It's also wise to secure an employment practices liability insurance policy.

That's a smart move for any business, particularly as the number of discrimination cases is on the rise nationwide, alongside higher jury awards for employees. ❖



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Train Your Workers in Use of Respirators

- Your local air pollution control district website.
- Checking PM2.5 levels at the worksite and converting them to the corresponding AQI (Appendix A of the regulations explains how).

Communications

Employers must establish and implement a system for communicating wildfire smoke hazards to affected employees, including allowing employees to inform the employer of such hazards at the worksite. Communications should include:

- The current AQI for PM2.5.
- Protective measures available to workers to reduce their wildfire smoke exposure.
- Encouraging employees to inform the employer of worsening job site air quality.

- Reporting symptoms such as asthma attacks, difficulty breathing and chest pain.

Training

Employers with outside workers should train them in:

- The health effects of wildfire smoke.
- The right to obtain medical treatment without fear of reprisal.
- How employees can obtain the current AQI for PM2.5.
- The requirements in Cal/OSHA's regulation about wildfire smoke.
- The employer's communication system.
- The employer's methods to protect employees from smoke.
- The importance, limitations and benefits of using a respirator when exposed to wildfire smoke.
- How to use and maintain respirators provided by the employer. ❖

Safeguarding Your Business from Earthquakes

AFTER THE series of earthquakes that rocked Southern California in early July, the temblors left some retail establishments and other businesses with damaged structures, inventories and furnishings.

If you are operating a business in California, you should take precautions to make sure your staff are protected in case of a quake, that you have proper insurance coverage and that you have plans to keep operations going after an event.

Get the right coverage

Business property policies do not cover earthquake damage, but few business owners think to buy earthquake insurance.

And every business is different and has different needs. An office like a law firm or software developer may not have the same need for coverage as a company that has a lot of expensive equipment or hundreds of thousands of dollars tied up in inventory.

Some carriers may require commercial structures to undergo inspections and the owners to make repairs and/or upgrades – such as securing the building to its foundation, bracing walls, chimneys or other masonry, as well as other structural improvements – before issuing a policy.

Also, earthquake insurance policies often have deductibles that may vary depending on your building’s location, age and condition.

WHAT COMMERCIAL EARTHQUAKE INSURANCE COVERS

- Structural damage due to seismic activity.
- Damage to property such as inventory, equipment and machinery.
- Some policies may also cover lost income due to business interruption stemming from an earthquake.

Worker safety

Hazards workers may encounter during an earthquake include being struck and/or trapped by falling debris and furnishings; being burned by fires from gas leaks or electrical shorts; and being exposed to chemicals.

OSHA recommends taking these steps to mitigate risks:

- Ensure workers have a designated safe place. This could be under a sturdy table or desk, or against an interior wall away from windows – somewhere to go in the event of an earthquake. Keep the distance workers have to move as short as possible.

- Conduct a “Great ShakeOut” drill, part of an earthquake preparedness initiative co-sponsored by the Federal Emergency Management Administration. You can [get more information or register your workplace here](#).
- Regularly practice “drop, cover and hold on” in the designated safe places. [Learn more at about drills here](#).
- Instruct employees on topics such as first aid and how to use a fire extinguisher.
- If a quake hits, workers should stay in their safe place until the shaking stops and remain alert for potential aftershocks.

Business continuity

You should identify your company’s critical business functions and define procedures that will facilitate restoration of sales, production and operations to pre-disaster levels. Focus on the following:

Ranking operations – Develop a business impact analysis that ranks functions from highly critical to important, so that you can recover the most critical functions first and then, over time, restore all business processes.

Developing strategies – Once you identify critical functions, develop strategies for how to recover functions within a prescribed time frame. For example, back-up data files should be stored offsite or on the cloud so you can access them quickly after an event.

Documenting the plan – It’s important to document the plan and procedures step-by-step.

Testing the plan – Test your plan once a year. These tests can be a simple exercise in which the staff discusses the steps required to respond to a disaster scenario.

All of this can help your team identify what won’t work, as well as what will. Business continuity planning is a cycle that requires continual reviews, updates and adjustments based on changes to your business operations. ❖



Why Your Business May Need Pollution Insurance

MANY BUSINESSES that produce some type of pollutant throughout the course of daily operations don't know they are doing so. Others know they are producing pollutants and have processes and safeguards in place to reduce their release into the environment.

A business can be held liable for some very costly damages when these byproducts pollute another property or harm another individual.

Pollution liability clauses were once part of general liability policies, but the extensive asbestos problems in the 1970s spurred most insurers to remove pollution protection from these policies.

Today, pollution liability coverage is obtained through a separate pollution insurance policy or rider. These policies are written for businesses of all sizes, shapes and forms – from pig farms and printers to apartment complexes, salons and dry-cleaning businesses.

What do policies cover?

Pollution liability insurance will cover you against lawsuits by a third party who has been or could be injured by a toxic substance produced as a result of your operations.

This insurance will pay for clean-up if necessary and any damages that your pollution may have caused. Like most types of insurance, policy specifics vary from insurer to insurer.

WHAT POLLUTION POLICIES COVER

Depending on the insurer, a pollution policy will typically cover:

- Damage to properties and individuals.
- The cost of cleaning up pollution.
- Pollution events that occurred after the policy took effect.
- Investigative, legal and court costs should the claim enter the legal system.

Who needs coverage?

Businesses that have risks related to the handling of pollutants and hazardous materials, design professionals who work with projects where there are environmental issues, as well as those who own and occupy premises that have environmental issues, need pollution liability insurance.

This includes:

- Property owners and tenants whose buildings and land have a history of having pollutants on the property or premises. This would include a building on land that had an underground storage tank that leaked fuel oil before it was removed, contaminating the soil.
- Contractors such as roofers who handle pollutants like tar as a part of their operations need contractor's pollution liability insurance to cover damage resulting from a pollution incident.
- Architects and engineers who are involved in projects that have issues related to pollutants need to add pollution liability to their errors and omissions insurance policy. This is in order to manage the risk of making a mistake regarding the presence or absence of pollution issues as they plan and execute a project.

The takeaway

Don't overlook pollution insurance as an important element of risk management. Should any questions or concerns about pollution coverage and insurance requirements arise, call us. ❖