

News You Can Use



Because You're Different

Natural Disaster Alert

Protecting Your Business During Wildfires

THE WILDFIRE danger continues growing in California, but it's not only homes that are being burned to the ground. Hundreds of business owners have seen their facilities succumb to the flames, leaving nothing but charred skeletal remains.

If you have a business in an area at risk of wildfires, you need to take steps to reduce your exposure and perhaps save your facilities in case a fire encroaches.

The following are recommendations from a variety of fire safety sources to protect your commercial property:

Check fire hydrants – Ensure fire hydrants are located no more than 250 feet from the primary buildings and are connected to a reliable water source.

Consider exterior walls – Select exterior wall cladding made of noncombustible siding materials such as concrete and brick. Ensure the bottom of the siding is no higher than 6 inches from the ground.

Choose the right windows – Use dual-paned windows made with tempered glass. For windows that can open, install screens to cover sections that can open. Always close windows when wildfire threatens.

See on 'Roofing' page 2

CONTACT US

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MAINTAIN A DEFENSIBLE SPACE

Zone 1 (zero to 5 feet)

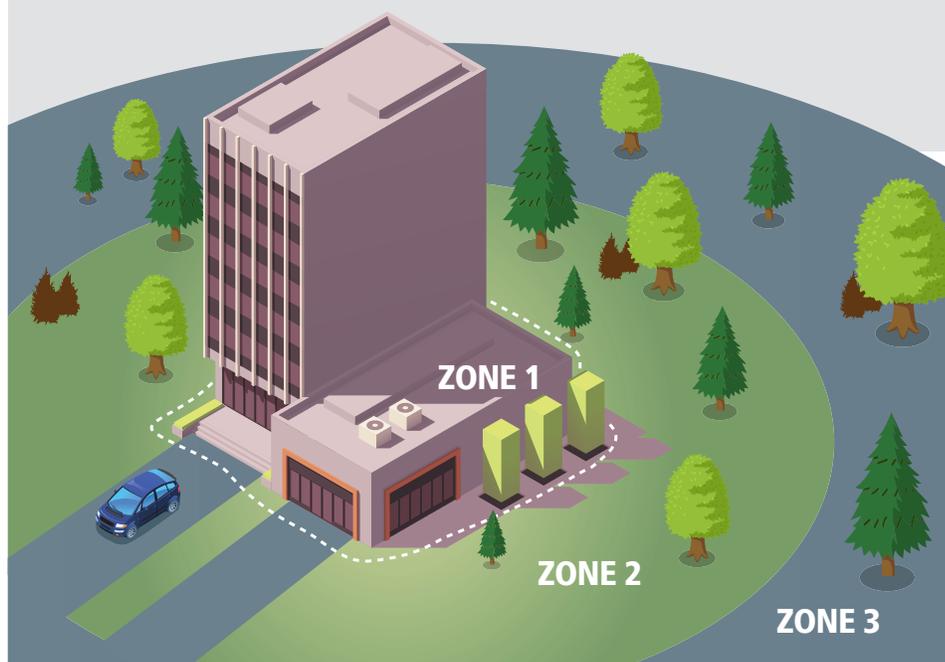
- Design and maintain this area to keep materials from igniting.
- Ensure nearby debris, dry leaves, and dead plant material do not accumulate in this zone.
- Use hardscape like gravel, pavers, concrete and other noncombustible mulch materials.
- The best practice is to have no vegetation in the area, but if you want to have bushes, select ones with low combustibility characteristics such as high moisture content, low oil or resin content and deep roots with thick heavy leaves.

Zone 2 (5 to 30 feet)

- Maintain trees and taller vegetation, and keep them at least 10 feet from each other.
- Remove vegetation under trees to prevent fire from climbing.
- Prune mature trees up to 6-10 feet from the ground. Landscaping in this area should include low growing, open-structured, less resinous, higher moisture content plants.

Zone 3 (30 to 100 feet)

- Mow grass down to a maximum height of 4 inches.
- Remove or dispose of tree needles or leaves, remove dead trees, thin out small trees and shrubs creating islands of vegetation.
- Thin mature trees so that canopies do not touch.
- Limb and prune mature trees up to 6-10 feet.



AB 5 Fix

Law Adds Independent Contractor Exemptions

A NEW LAW has come to the rescue of a number of freelance professions by exempting them from the onerous requirements of AB 5, which required most independent contractors to be classified as employees in California.

Governor Gavin Newsom on Sept. 1 signed AB 2257 as an urgency measure, so that it took effect immediately.

If you remember, AB 5 set a new standard for hiring independent contractors, requiring many to be reclassified as employees covered by minimum wage, overtime, workers' compensation, unemployment and disability insurance. It created a three-pronged test that needs to be satisfied to determine if someone is an independent contractor or an employee.

To be independent contractors under AB 5's "ABC test," workers must (A) work independently, (B) do work that is different from what the business does, and (C) offer their work to other businesses or the public. All three conditions must be met.

It is prong B that's problematic. For example, a freelance writer working for a magazine would not be doing something different than the business does. The law sets limits on the amount of income someone can receive while doing this kind of work before being considered an employee.

AB 2257 also expands the "business-to-business" definition in AB 5 to cover a relationship between two or more sole proprietors.



PROFESSIONS NOW EXEMPT FROM AB 5

- Youth sports coaches
- Specialized performers
- Home inspectors
- Appraisers
- Underwriting inspectors
- Premium auditors
- Risk management, or loss control specialists
- Sports competition judges, umpires and referees
- Graphic designers
- Web designers
- Tutors
- Consultants
- Caddies
- Wedding planners and event vendors
- Yard cleanup
- Interpreters and translators

FREELANCE EXEMPTIONS

- Fine artists
- Freelance writers
- Translators
- Editors and content contributors
- Advisors, narrators, cartographers, producers and copy editors
- Illustrators, and newspaper cartoonists working under written contracts.



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Use Class A Fire-resistant Roofing

Choose the right fencing – When neighboring buildings are located within 20 feet of each other, use of steel fencing for the perimeter area can serve as a radiant barrier, providing added protection should a neighboring building ignite and burn.

Cover your vents – Install 1/8-inch noncombustible mesh screening over all vents to prevent embers from entering through them.

Clean gutters, select Class A fire-resistant roofing – Clean gutters regularly, particularly during the summer months and during fire season.

Remove debris, which can be ignited by wind-blown embers, from roof and gutters.

Install gutters and downspouts made of noncombustible materials such as aluminum. Do not use foam insert gutter guard materials, even if the manufacturer makes claims related to fire resistance.

Select roofing with a Class A fire rating.

Use noncombustible materials for signs – Consider signs made of aluminum or other lightweight materials that won't ignite easily. ❖

Cal/OSHA Rulemaking

Permanent Wildfire Safety Rules on Tap

AS WILDFIRES continue raging throughout California, Cal/OSHA has issued a reminder to employers that they are required to protect their outdoor workers from smoke if the air quality index exceeds 150.

Cal/OSHA has extended an emergency regulation it put in place in August 2019 through January 2021 as it works on a permanent regulation on wildfire smoke protection for outdoor workers in the state.

For the safety of your workers and to comply with the regulation, it's important that you follow the regs and know when you will need to take action to protect them from outdoor smoke.

The regulation applies when the Air Quality Index (AQI) for airborne particulate matter 2.5 microns (PM2.5) or smaller is 151 or greater in an area where employees are working outdoors. Here are the details:

Identification

Employers must monitor the AQI for PM2.5. You can use the following websites:

- U.S. EPA AirNow
- U.S. Forest Service Wildland Air Quality Response Program
- California Air Resources Board
- Local air pollution control district websites or local air quality management district websites.

Training and instruction

Train their workers in:

- Health effects of wildfire smoke.
- Their right to obtain medical treatment without fear of reprisal.
- Obtain the AQI for PM2.5.
- Actions they must take if the AQI exceeds 150 PM 2.5

Communication

Employers must implement a system for communicating wildfire smoke hazards to all affected employees, as well as a system for employees to inform the employer of smoke hazards.

OPTIONS FOR PROTECTING WORKERS

The regs provide three ways employers can protect their workers:

1. Modifications – If possible, employers should implement modifications to the workplace in order to reduce exposure. Examples include providing enclosed structures or vehicles for employees to work in, where the air is filtered.

2. Changes to procedures and schedules – Another option is to change work procedures or schedules. Examples include changing the location where employees work or reducing the amount of time they work outdoors or are exposed to unfiltered outdoor air.

3. Respiratory protection – Employers also have the option to provide proper respiratory protection equipment, such as disposable respirator masks for voluntary use without fit-testing. Respirators must be labeled N-95, N-99, N-100, R-95, P-95, P-99 or P-100, and must be approved by the US National Institute for Occupational Safety and Health.

If the AQI is above 300, fit-testing and a medical examination prior to use would be mandatory.

IMPORTANT RESPIRATOR ANNOUNCEMENT

N-95 masks are still in short supply due to the COVID-19 pandemic and Cal/OSHA recommends that while N95 respirators are optimal, an employer who finds them unavailable can utilize certain KN95 respirators, but only up to 175 AQI.

Finally, the California Department of Industrial Relations has published a list of N-95 mask vendors, which you can find [here](#).

Further N-95 mask guidance can be found [here](#).

The takeaway

If you have outside employees who may have to work in smoky conditions, you should stockpile a two-week supply of N95 masks for all of them if you are unable to implement other controls to reduce their exposure.

Cal/OSHA is in the process of making the emergency rules permanent and has sent them out for public comment. We will continue monitoring the agency's progress on the rules and update you when they have been completed. ❖

New Law Creates COVID-19 Claim Framework

GOVERNOR GAVIN Newsom has signed legislation that creates a new framework for COVID-19-related workers' compensation claims.

SB 1159 replaces an executive order that Newsom made on March 18 that required all employees working outside the home who contracted COVID-19 be eligible for workers' compensation benefits if they file a claim.

The new law expands that "rebuttable presumption" that a coronavirus case is work-related to front-line workers, as well as employees in workplaces that have had an outbreak of cases.

The new law is retroactive to July 6, the day after Newsom's executive order expired, and is set to expire Jan. 1, 2023.

Employers with fewer than five employees are exempt under the statute.

SB 1159's three parts

Part 1. The law codifies Newsom's prior executive order that provided a "rebuttable presumption" that COVID-19 was contracted in the scope and course of work by employees working outside of the home who get infected.

Part 2. The law provides a rebuttable presumption that firefighters, law enforcement officers, health care workers and home care workers who contract COVID-19, contracted it in the workplace.

Part 3. The law creates a rebuttable presumption that a worker's COVID-19 diagnosis is work-related within 14 days of a company outbreak. Under SB 1159, an outbreak is defined as when four employees test positive at a specific place of employment with 100 or fewer employees and, for larger places of employment, when 4% of the employees test positive.

It's also deemed a workplace outbreak if the employer had to shut down due to the coronavirus.

Rebutting a claim

Employers can rebut the presumption that COVID-19 was contracted at work if they have:

- Proof of measures they put in place to reduce potential transmission of COVID-19,
- Evidence of the employee's non-occupational risks of contracting COVID-19,
- Statements made by the employee, or

- Any other evidence normally used to dispute a work-related injury.

REPORTING REQUIREMENTS

When an employer learns of an employee testing positive, they must report to the insurer the following information within three business days:

- The date the employee tested positive.
- The address or addresses of the employee's specific place(s) of employment during the 14-day period preceding the date of their positive test.
- The highest number of workers who reported to work in the 45-day period preceding the last day the employee worked at each specific site.

The Rossi Law Group has the following recommendations for employers in California:

- Keep track of all locations each employee works at, the number of employees on each day at each location, as well as a log of those that test positive (including the date the specimen was collected).
- If you are aware of any staff who have tested positive between July 6 and Sept. 17, you have 30 days after Sept. 17 to report the positive test to the claims administrator.
- You must also report to the claims administrator positive COVID-19 results for employees that are not filing claims. You must omit personal identifying information of such employees.
- Provide any factual information to the claims administrator that could help rebut any claim of work-relatedness.

The law also has some teeth: Anyone who submits false or misleading information shall be subjected to a civil fine up to \$10,000.

One last thing...

The governor also signed into law AB 685, which requires employers to report an outbreak to local public health officials.

Employers must also report known cases to employees who may have been exposed to COVID-19 within one business day of the employer learning of the possible exposure. ❖

