

Cal/OSHA Rulemaking

Protecting Outdoor Workers from Wildfire Smoke

CAL/OSHA is developing rules that would require employers of outdoor workers to provide respiratory equipment when air quality is affected by wildfires.

Smoke from wildfires can travel hundreds of miles and while an area may not be in danger of the wildfire, the smoke can be thick and dangerous, reaching unhealthy levels.

Many employers want to hand out respirators to outside workers, but regulations governing the use of ventilators can be burdensome.

The California Code of Regulations, Title 8, Section 5144 requires employers that distribute respirators to implement a written respiratory protection program, require seal-testing before every use and conduct medical evaluations prior to use.

What to expect

The regs are still in draft form and are unlikely to be completed this summer for the upcoming fire season.

But here is what you can expect:

The draft of the regulations 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:

- Checking AQI forecasts when employees may reasonably be expected to be exposed to an AQI of more than 150.
- Establishing a system of communication to inform employees about AQI levels and changes in conditions that can lead to bad air quality, and about protective measures.
- Training workers in the steps they would have to take if the AQI breaches 150.

PROTECTIVE MEASURES

Draft regulations call for the following steps:

First steps (if feasible):

- Providing enclosed structures or vehicles with filtration where employees can work,
- Relocating workers,
- Changing work schedules,
- Reducing work intensity, or
- Giving them additional rest periods.

Second steps

- If none of the above are feasible, the rule provides for voluntary respirator (without fit-testing and medical examinations) use when the AQI is between 150 and 300.
- If the AQI is above 300, fit-testing and a medical examination prior to use would be mandatory.

The regulations are pending with the Cal/OSHA Standards Board, which is expected to vote on them in July.

For now, if you do have outside employees who are confronted with working in smoky conditions, you should start stockpiling a two-week supply of N95 masks for all of your workers. ❖



CONTACT US

700 E Street
Sacramento, CA 95814

Phone: 866.211.2123
Fax: 866.913.7036
www.leaderschoiceins.com

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info@leaderschoiceins.com

Workplace Safety

Make Sure Safety Equipment Fits Female Workers

EARLIER THIS year NASA was forced to cancel its first-ever all-female spacewalk because they didn't have two suits on the International Space Station that fit them.

While most people were shocked, women in professions that require them to wear personal protective equipment (PPE) know the challenges they face in getting equipment that fits properly.

The problem has really come to the fore as more and more women enter professions that have traditionally been jobs that men gravitate towards. For example, nearly 10% of construction jobs in the U.S. are now held by women.

It's not uncommon for women in those types of work to have to use equipment that is made for men, forcing them to don overalls, gloves, vests, footwear and more that are too large,

If you have jobs that require specialized protective equipment, now is the time to also make sure that you have items in smaller sizes if you have women on your team.

It may not always be easy to find everything in smaller sizes. It's usually not too difficult to find protective shoes in women's sizes, but coveralls and tools for smaller hands are rare.

Getting the right fit for your workers is imperative because loose-fitting items can lead to accidents that cause injuries or worse, especially if loose coveralls get caught in machinery.

SOME ITEMS TO CARRY IN SMALLER SIZES

- Safety glasses
- Hard hats
- Protective shoes
- Coveralls
- Safety harnesses
- Safety gloves
- Ear plugs

You should also not ask your female workers to take shortcuts, like rolling up sleeves or pant legs that are too long. If they are rolled up, they're not providing protection to parts of the arms and legs, experts say.

And it's not just women who are small. Clearly, many men are also smaller than average, and they often have the same issues with ill-fitting protective equipment as women do.

The problem is that most employers that buy protective equipment for workers order it in bulk, and they will usually opt for large or extra-large sizes.

Apply standards uniformly

If you have women in your workforce, you should apply the same standards to their PPE as you do for men.

To make sure that you have equipment that fits all of your workers:

- First talk to your employees and ask them to give honest assessments of how the PPE they have been issued fits.
- Don't ask women to wear equipment that is too large. It can create a safety hazard and may not protect them properly.
- Don't alter equipment yourself. Safety equipment is manufactured to provide safety if it fits properly. Altering the equipment can make it unsafe and noncompliant with safety standards.
- Don't criticize, ignore or retaliate against employees who report ill-fitting PPE.
- When selecting safety equipment, consult with your employees to make sure you order items that will fit them.
 - Provide the same range of sizes for women as for men and ensure that suppliers have properly assessed the appropriateness of their equipment to women and men.
 - Require your workers to try on different sizes of equipment before choosing the ones that fit best. ❖

Risk Management

Conduct Diversity Training to Head Off Lawsuits

AFTER R&B star SZA said she had security called on her while shopping at a Zefora store in California, the chain closed all of its U.S. stores for an hour to conduct “inclusion workshops” for its 16,000 employees.

Unfortunately, Zefora is not the only company that has made the spotlight thanks to rogue employees that cross the line and harass or discriminate against a customer, co-worker, vendor or partner.

And with so many people video-recording encounters, a rogue employee can result in a costly lawsuit for your company.

The second threat is the potential backlash of customers if word spreads on social media. This was the case with two Oregonians who ended up closing their bakery after the public backlash that followed their decision to not bake a wedding cake for a homosexual couple.

The best way to set a tone of tolerance is through diversity or inclusion training to guide staffers in their day-to-day interactions with co-workers, customers, partners, vendors and others.

While training is not mandated by any state or federal agency, it is recommended whether or not you have a diverse workforce or client base.

Implementing a diversity training program is also an important step in helping to reduce the risk of workplace discrimination and harassment claims.

In settling discrimination cases, the Equal Employment Opportunity Commission often requires companies to educate employees on the importance of diversity in hiring and promotion, and how to avoid stereotypes.

A proactive employer that wants to avoid problems from the get-go would take that step without being required to.

More important than ever

Our country is becoming more diverse. It's not only different races and religions, but also sexual orientation and alternative lifestyles. The norms that dictated behavior a half-century ago are transforming.

To minimize the risk that employees, supervisors or managers step out of line in this new era, employers must develop an awareness of diversity within their business through appropriate training.

Elements of a strong training program

Find ways to integrate training into daily tasks. It must go beyond a once-a-year training session. Here are some ideas:

Draw the line – Make it clear that intolerance is not acceptable, and that those demonstrating prejudice have no place in your organization.

Get management buy-in – Ingrain in your managers and supervisors the importance of diversity to both boost worker satisfaction and as a risk management tool to avoid lawsuits. Managers must understand the personnel dynamics among the staff they manage, as well as interactions with customers.

Treat everyone with respect – Employees should not prejudge a customer or co-worker and treat them as a lesser individual. If they do, they can be reprimanded and, if the offense is serious enough, fired.

System for handling complaints – Create procedures that managers must follow if they receive a complaint about harassment or discriminatory behavior, or if an employee witnesses another employee treating a co-worker, customer or vendor in a demeaning way.

Hold a seminar for all employees – Review what is acceptable and not acceptable, and cover all of the above. Try to focus on positives and give employees the opportunity to ask questions. ❖



Errors & Omissions

Lawsuits Grow for Professional Services

PEOPLE OFTEN think of professional liability insurance as something only doctors and lawyers need. The truth is that anyone in any profession can be sued for making bad decisions.

Standard business general liability insurance policies do not cover liability for professional mistakes. They will not cover errors that cost someone else money without causing bodily injury to them or destroying their property.

People in occupations that may not at first blush be considered “professions” may still be at risk of lawsuits for acts they have or have not committed.

PROFESSIONAL LIABILITIES RUN THE GAMUT

- An ebook publisher issues a collection of short stories. The editor is unaware that one of the stories had been previously published in an online magazine, which still holds the rights to them. The magazine publisher sues the ebook publisher for copyright infringement.
- A developer of customer relationship management software customizes a system for a large client. The network is hacked, resulting in substantial costs for notifying customers, credit monitoring and penalties. The client sues the developer.
- Prior to granting a mortgage on a commercial development, a lender asks a property appraiser to determine its value. The buyer goes bankrupt a year later, and the lender forecloses. The lender learns that the property’s value is well below the figure the appraiser determined; selling the property will not recoup the amount of the mortgage. The lender sues the appraiser for the error.
- A website publishes photos of a politician in intimate embraces with a person who is not that politician’s spouse. The politician’s friend sues the website for invasion of privacy.
- An interior designer, planning a new wing for a hospital, orders more than \$100,000 worth of workstations, chairs, tables and other furniture. The person placing the order makes a typo when entering the tables’ product number. The tables that arrive do not fit the space. The designer must order new ones, resulting in extra expense and a delayed opening for the wing.
- Owners hire a contractor to renovate an old building that they plan to use for a new microbrewery. The project’s cost initially stays under the contractor’s estimate. But, the owners find that the capacity of the water filtration system is less than the contractor promised. The system has to be upgraded at an additional cost of \$30,000. The owners sue the contractor.
- A loan broker makes several commercial equipment loans on behalf of a finance company. The company finds out that half of the loans did not meet its lending guidelines. Some of them become nonperforming, and the lender seeks \$300,000 from the broker for the unpaid amounts.

OOPS!

The takeaway

All kinds of businesses can be sued for their mistakes. Even if they acted appropriately, they still must hire lawyers to defend themselves. For these reasons, professional liability insurance, more commonly known as errors and omissions (E&O insurance), can be vital to the survival of their operations.

E&O insurance can cover the cost of defending your company in a civil lawsuit and certain damages awarded, even if the legal action turns out to be groundless.

E&O insurance is required by law for certain kinds of professional practices, especially medical and legal, where it is more commonly called malpractice insurance. This type of protection is not part of your general liability insurance or homeowner’s insurance. ❖

