

Oregon OSHA's New Rules for Extreme Heat & Wildfire Smoke

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Oregon OSHA has been busy this summer and recently issued two new rules for protecting workers from exposure to extreme heat and wildfire smoke. Here's what you need to know:

Heat-Illness Prevention

On July 8, 2021, Oregon OSHA created an emergency heat-illness prevention rule that requires employers to implement means of preventing, mitigating, and quickly responding to heat illness. Employers must provide protection to employees who perform work activities when the heat index equals or exceeds 80 degrees, with additional requirements when the heat index is over 90 degrees. The only exception to the rules is when heat is generated only from the work process (in foundries, for example).

Access to Shade & Drinking Water

Employers must maintain at least one "shade area" that does not expose employees to unsafe or unhealthy conditions or discourage use. When an employer can demonstrate that providing a shade area is not safe or practical, it must implement alternative cooling measures of equivalent protection.

Employers must also provide an adequate supply of readily accessible cool or cold drinking water at no cost to the employees and ensure employees have ample opportunity to drink water. There must be enough water supply for each employee to consume 32 ounces per hour.

Training

No later than August 1, 2021, employers must train *all* employees on heat-illness prevention. The training must include:

- environmental and personal risk factors for heat illness;
- effects of non-occupational factors on tolerance to heat stress;
- different types of heat-related illness and their common signs and symptoms;
- procedures for complying with the requirements of the rule;
- introduction to the concept, importance, and methods of acclimatization; and
- importance of immediately reporting signs and symptoms of heat illness in themselves or others.

High Heat Practices (Over 90 Degrees)

When the heat index exceeds 90 degrees, employers must ensure effective communication at all times, observe employees for alertness, signs and symptoms of heat illness, and monitor affected employees to determine whether medical attention is necessary. Employers must also implement at least one of the following procedures: ensure regular communication with employees working alone, create a mandatory buddy system, or implement other equally effective means of observation or communication.

One employee must be designated to contact medical services in the event of an emergency; although, employers must allow any employee to contact medical services if the designee is not immediately available.

Employers must ensure each employee takes a minimum ten-minute preventative cool-down rest period in the shade every two hours regardless of the shift length. These breaks may be provided concurrently with any other meal or rest break required by policy, rule, or law if the timing of the cool-down rest period coincides with the otherwise required break. Except when a cool-down rest period coincides with an unpaid meal break, the cool-down rest period must be paid.

Emergency Medical Plan

Employers must also create an emergency medical plan that addresses:

- Responding to signs and symptoms of possible heat illness;
- Contacting emergency medical services, and transporting employees to reach medical services when necessary; and
- Ensuring clear and precise directions to the worksite are provided for first responders to navigate to the affected worker, in the event of an emergency.

Exposure to Wildfire Smoke

Oregon OSHA issued temporary rules effective August 9, 2021, that apply to employers whose employees will be exposed to wildfire smoke when the Air Quality Index (AQI) is at or above 101. The rule requires employers to provide training about the hazards of wildfire smoke and to implement certain exposure controls and a system for communicating with employees.

Beginning August 16, 2021, employers must provide training about the hazards of wildfire smoke and how to address them before exposing employees to wildfire smoke when the AQI is at or above 101, unless the employer determines in advance that it will suspend operations in the event that the AQI is at or above 101. Oregon OSHA has provided sample training materials for employers that can be found on Oregon OSHA's website.

If the AQI is at or above 101, employers must make respirators available to employees for voluntary use. Once the AQI is at this level, employers must also implement a system to communicate with and notify employees regarding wildfire smoke hazards, including AQI levels.

If the AQI is at or above 201, employers must ensure that employees wear NIOSH-approved respirators or previously FDA-approved KN-95 masks. Additionally, employers must take steps to reduce exposure by using feasible engineering controls (provide access to enclosed buildings, structures, or vehicles where air is adequately filtered) or administrative controls (such as relocating work or changing work schedules).

If the AQI is at or above 501, employers must ensure employees wear NIOSH-approved respirators and implement a complete Respiratory Protection Program, in compliance with 29 CFR 1910.134.

Importantly, the rules do not apply to intermittent exposure of less than 15 minutes in an hour or short-duration exposure of less than two hours in a single 24-hour period. Additionally, some workplaces are exempt from the rule, including enclosed buildings with a mechanical ventilation system and enclosed vehicles with air filtered by a cabin air filter.

What Employers Can Do Now

It is critical for employers to develop plans and policies now to ensure compliance with the rules and employee safety when the heat index rises to 80 degrees or higher and/or when the AQI equals or exceeds 101. Employers are encouraged to reach out to counsel with questions regarding compliance with these rules.

For questions on compliance with these rules or other labor and employment matters, contact Barran Liebman attorney Natalie Pattison at 503-276-2104 or npattison@barran.com.