



Policy Priorities for Outdoor Worker Health and Safety During Wildfires

Background

Wildfires are becoming increasingly frequent and severe across California, a trend which is projected to worsen significantly due to climate change. Although policy conversations on wildfire often focus on property loss and danger to those living directly in evacuation zones, the impacts of growing wildfires stretch far beyond direct burn areas. In fact, by far the most pervasive impact of wildfires are the health impacts of wildfire smoke. Fine particles in the air from wildfire smoke can harm long-term lung function, worsen asthma and other existing heart and lung conditions, irritate the eyes, and cause coughing, wheezing, and difficulty breathing.

Some populations are particularly vulnerable, such as unsheltered residents and outdoor workers, who lack the ability to shelter indoors during extreme smoke events. In particular, farmworkers are heavily impacted in California, with its labor-intensive agricultural harvesting near high-fire-risk areas. Agricultural work is more likely than other outdoor work sectors like construction to continue during wildfire emergencies in order to prevent potential crop loss. Farmworkers are among the most vulnerable workforces in the state, often facing linguistic isolation limiting access to safety information, exclusion from much of the safety net due to immigration status, overall economic insecurity and dependence on seasonal income, low rates

of healthcare access, and preexisting health disparities such as respiratory issues from dust and pesticide exposure.

Problem

California's Occupational Safety and Health Standards Board has recently adopted Protection from Wildfire Smoke regulations that require respirators (usually N95 masks) to be provided to outdoor workers when the Air Quality Index rises above 150 as well as safety training and communication about smoke hazards in a language and manner understandable by all employees. Where practicable, employers must also implement changes to work procedures or schedules and reduce employee exposure to smoke.

However, these regulations face significant obstacles to effectively protecting workers. The protections provided are relatively weak, coming into effect when air quality is poor enough to be harmful for the general public, rather than a uniquely exposed group performing heavy manual labor outdoors for long periods of time. They mandate employers provide respirators (typically N95 masks) over 150 AQI for voluntary use, but do not mandate the required use of respirators until over 500 AQI, a severely high level which is only reached in the peak of the most historically devastating wildfires. Furthermore, masks alone may not adequately protect workers from dangerous air quality, especially if masks are not well-fitted and training is inconsistent. Performing heavy labor for long hours wearing an N95 mask is also difficult for workers.

Cal/OSHA, the agency charged with enforcement, is generally under-resourced and not well-equipped for rapid emergency response, shifting the burden on to workers to file a complaint that is unlikely to receive a timely resolution during a major natural disaster. Many workers are distrustful of Cal/OSHA and feel that violations of health and safety protections are difficult to prove as employers anticipate Cal/OSHA inspections and remove evidence of violations, and that investigations take too long to resolve to benefit the workers. In addition, proving long-term health issues are directly caused by previous exposure to wildfire smoke for a Workers' Compensation claim is nearly impossible, making it difficult to pay for long-term healthcare costs.

Farmworkers face barriers to exercising their rights including lack of access to information about state regulations and real-time air quality information in the fields, linguistic isolation including a predominance of oral indigenous languages among many workers, fear of reporting to government agencies due to immigration status, and fear of retaliation for reporting labor violations during a disaster. Particularly because most farmworkers are undocumented and therefore excluded from safety net protections like unemployment insurance, the potential risks for job loss due to retaliatory actions from employers are greater and the costs to choosing not to work in a dangerous environment are much higher. While the agriculture industry receives

millions in crop insurance payments for losses during wildfires, including significant public funds, undocumented workers receive no public assistance for loss of work.

Solutions

There are three necessary components of improving wildfire safety for outdoor workers. First, worker safety regulations must be strengthened to lower thresholds at which requirements for safety equipment such as N95 masks are provided and include other safeguards like additional breaks. Second, implementation of these regulations must be improved through proactive enforcement to take the burden off the worker to report violations during an emergency, as well as annual training and real-time alert systems to notify workers about their existing rights and when those protections are in effect. Finally and perhaps most importantly, policy must shift the economic incentives during wildfires to allow workers the financial freedom to choose not to work during a disaster and the right to fair compensation for dangerous work.

Strengthening Safety Regulations

Reduce Thresholds for Supplying and Requiring Use of N95 Respirators*

We recommend the Protection from Wildfire Smoke standard is amended and approved by the Occupational Safety and Health Standards Board (OSHSB) to reduce the threshold for providing N95 masks for voluntary use to 100 (harmful for sensitive groups) and for mandatory use to 200 (very unhealthy). The current standard is based on risk levels to a general population rather than outdoor manual laborers who face far greater health risks from exposure to wildfire smoke.

Retaliation Protection*

We recommend legislation or regulations creating specific retaliation protection for workers through tougher financial penalties for employers who terminate outdoor workers, refuse to hire them the following season, or other denial of opportunities after they refuse to work due to high levels of wildfire smoke, unless the employer can prove the termination was not retaliatory. With vastly different access to legal resources, requiring the burden of proof to be on the employer rather than the employee for retaliation cases is vital. Penalties for employers must also be high enough to act as a true economic disincentive for retaliating against workers who choose not to work in dangerous conditions.

Increase Frequency of Required Rest Breaks

We recommend legislation or regulation to ensure access to paid rest breaks every 2 hours during harmful air quality from wildfire smoke. Frequent rest breaks allow workers under respiratory and cardiac stress to recover, reducing the toll on their bodies. It also would act as a small disincentive for employers to require dangerous work during a disaster unless necessary.

Implementation and Education

Cal/OSHA Rapid Response Teams*

We recommend the State of California provide funding to Cal/OSHA for rapid response enforcement teams which could be deployed to areas experiencing wildfire to proactively inspect for compliance at outdoor workplaces. These rapid response teams could work collaboratively with community-based organizations and observers, responding to hotline reports of employers not complying with safety protections for outdoor workers. This would relieve the burden from a highly vulnerable group of workers to report violations during an emergency and encourage employers to prioritize compliance to avoid penalties. Due to the length of the ordinary Cal/OSHA process for reporting, inspection, investigation, and resolution, emergency safety protections must have an expedited process in order to be effective. Staff of these rapid response teams must receive specialized training in the unique issues faced by outdoor workers during wildfires as well as the cultural and linguistic skills needed to serve this segment of the workforce.

Education Partnerships with Community-Based Organizations*

We recommend the Labor and Workforce Development Agency provide grants for “know your rights” education to community-based organizations serving outdoor workers, modeled on the successful partnerships developed during the COVID-19 pandemic through the COVID-19 Workplace Outreach Project (CWOP). This would increase the cultural and linguistic competency of outreach efforts and leverage existing relationships of trust to improve worker knowledge of existing protections.

Mandatory Annual Training

We recommend the Protection from Wildfire Smoke standard be amended and approved by the Occupational Safety and Health Standards Board (OSHSB) to require all employers of outdoor workers conduct an annual paid training on wildfire safety regulations for all employees and frontline supervisors. This would result in proactive training and education of workers rather than reactive training in the midst of a disaster. Trainings should be a minimum of one hour duration. Cal/OSHA should develop a curriculum taskforce including organizations representing

outdoor workers to improve the cultural and linguistic competency of trainings. Trainings must include education on both short-term and long-term health impacts of working outdoors in wildfire smoke, how to properly use a respirator mask, and emergency response when a worker is experiencing symptoms. This training could also include information on heat safety standards, which are also a growing climate change risk to outdoor workers.

Alert Systems

We recommend the California Air Resources Board (CARB) develop an emergency air quality alert system specifically designed for outdoor workers and their frontline supervisors, which would send multilingual text and audio messages when the Air Quality Index reaches the threshold where labor protections come into effect. This can be modeled on a program recently developed by the Ventura County Air Pollution Control District and could also include heat alerts as well as audio messages in oral indigenous languages common among farmworkers. This will provide outdoor workers in the fields with real-time alerts in their language about current air quality levels and their rights to workplace safety. Although this program may be politically easier to advance than regulatory measures, it must be seen as a complement to them, not a substitute. Alert systems alone do not allow workers to assert their rights if their supervisors do not comply with regulations, and there are many barriers including lack of cellphone reception in remote rural areas or access to audio messages in many oral indigenous languages.

Shifting Economic Incentives

Wage Replacement*

We recommend legislation to create a wage replacement program for workers excluded from federally-funded unemployment insurance benefits. This would ideally apply generally, whether workers are impacted by a wildfire, pandemic, or simply a lack of farm work during the winter season or a drought. However, even a wage replacement program applying narrowly during a state of emergency declaration in a county impacted by wildfire would provide substantial relief. Wage replacement would allow workers the freedom to choose not to work in unhealthy or dangerous conditions, regardless of their immigration status. Even when N95 masks are provided and good training and communications programs are in place, outdoor work in wildfire smoke remains unhealthy, and undocumented workers do not have the economic resources to remain home during a disaster without unemployment benefits.

Hazard Pay*

We recommend legislation to require additional hazard pay when outdoor workers perform work in harmful air quality or in an evacuation area. Work in an area where the AQI for small particulates (PM2.5) is over 150 due to wildfire smoke should be paid at 1.5x the normal rate. Advocates are mixed on whether “Ag Passes” (a program allowing agricultural work in an active evacuation area) should be legal at all. However, at a bare minimum, this work should never be

mandatory (workers should have the opportunity to opt out with Disaster Paid Not Worked Protocol) and any work within evacuation zones should require hazard pay at 2x the normal rate. This would provide a disincentive for employers to require this hazardous work except when absolutely necessary, while providing increased compensation for those who carry out this essential work and risk illness and other costs.

Conclusion and Top Priorities

These recommendations are intended to guide state policymakers in advancing the health and safety of outdoor workers, particularly farmworkers, during California's increasingly frequent and severe wildfires. They were developed by organizations engaging directly impacted workers with long histories of advocacy for worker health and safety, including the Central Coast Alliance United for a Sustainable Economy (CAUSE), California Rural Legal Assistance Foundation (CRLAF), Lideres Campesinas, Mixteco/Indigena Community Organizing Project (MICOP), North Bay Jobs with Justice, and WorkSafe. While our working group developed all of these policies are necessary to advance comprehensive solutions to this growing problem, the starred priorities represent policies we identified as the most impactful. In particular, we believe a wage replacement safety net for workers who are unable to work in dangerous conditions is the most important policy priority, followed by strengthening retaliation protections, reducing air quality index thresholds for respirator mask protections, funding rapid response enforcement teams at Cal/OSHA, partnering with community-based organizations to conduct worker education, and requiring hazard pay for work under dangerous conditions. Only through a comprehensive approach of strengthening safety protections, enhancing education and enforcement, and changing the economic incentives for work in dangerous conditions can we ensure the safety of agricultural and other outdoor workers,