

# Returning to Work Under California's New Tier System & Protection Against Wildfire Smoke

September 9, 2020

# Disclaimer

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*This presentation has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities.*

## Presented By

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# Agenda

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- Provide general guidance and awareness of California's Reopening/Return to Business Tier System
- Provide general guidance on Cal-OSHA's Protection from Wildfire Smoke Standard
- Questions and Answers

# California's Four-Tier System

- Effective August 31, 2020 California will use a new four-tier system to determine how each county can reopen.

	Higher Risk → Lower Risk of Community Disease Transmission			
	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Measures*				
New cases**/100,000 population per day (7 day average; 7 day lag)	>7	4-7	1-3.9	<1
Testing % Positivity (7 day average; 7 day lag)	> 8%	5-8%	2-4.9%	<2%

- A county Health Department can issue stricter guidelines but cannot have lower guidelines than the state.

# California's Four-Tier System

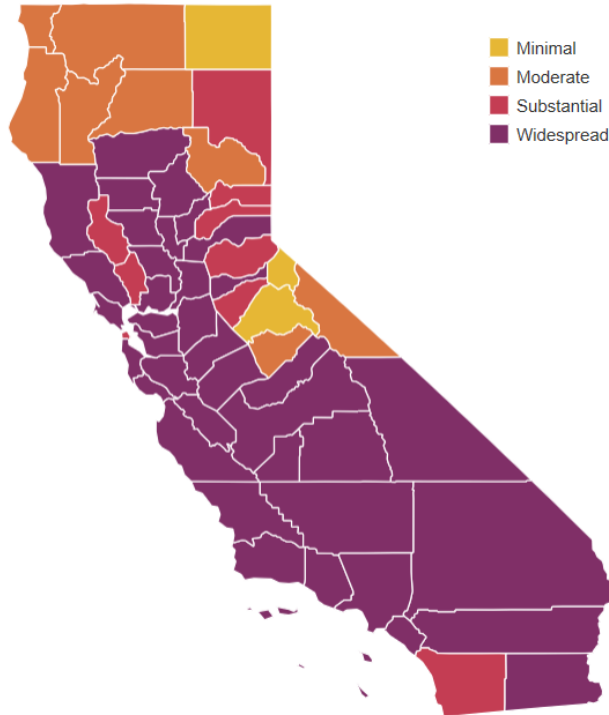
## Statewide Metrics

**10.9**

New COVID-19  
positive cases  
per 100K

**6.0%**

Positivity Rate



- The guidelines can be found via the following link:  
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>
- Counties will be judged on two specific criteria:
  - Case Rate (Adjusted)
  - Test Positivity Measure
- If their case rate and test positivity rate fall into two different tiers, they will be assigned to the higher tier.
- To find your county's Health Department, visit the following:  
<https://www.cdph.ca.gov/Pages/LocalHealthServicesAndOffices.aspx>

# California's Four-Tier System

- You are able to see how your business or school is affected by the new system at <https://covid19.ca.gov/safer-economy/>
  - Select your county and industry to see what the current restrictions are.
- The entire framework for the four tiers is located at [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Dimmer-Framework-August 2020.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Dimmer-Framework-August%202020.pdf)

## Employer Considerations



Review your Return to Work Plan



Modify your plan to accommodate the current regulations and future tiers



Conduct a Hazard Assessment



Train employees on safe work practices



Document activities



# Cal/OSHA Regulation: Protection from Wildfire Smoke

- Went into effect July 29, 2019
- California Code of Regulations, title 8, [section 5141.1](#) applies when both:
  - The current Air Quality Index (current AQI) for airborne particulate matter 2.5 micrometers or smaller (PM) is **151 or greater** and
  - The employer should reasonably anticipate that employees may be exposed to wildfire smoke

Air Quality Index		
AQI Category and Color	Index Value	Description of Air Quality
Good Green	0 to 50	Air quality is satisfactory, and air pollution poses little or no risk.
Moderate Yellow	51 to 100	Air quality is acceptable. However, there may be a risk for some people, particularly those who are unusually sensitive to air pollution.
Unhealthy for Sensitive Groups Orange	101 to 150	Members of sensitive groups may experience health effects. The general public is less likely to be affected.
Unhealthy Red	151 to 200	Some members of the general public may experience health effects; members of sensitive groups may experience more serious health effects.
Very Unhealthy Purple	201 to 300	Health alert: The risk of health effects is increased for everyone.
Hazardous Maroon	301 and higher	Health warning of emergency conditions: everyone is more likely to be affected.

# Cal/OSHA Wildfire Smoke Regulation

## Cal/OSHA Regulation to Protect Outdoor Workers from Wildfire Smoke

Employers must take the following steps to protect workers who may be exposed to wildfire smoke (*Outdoor employees such as gardeners, street repair staff, maintenance employees, etc. or anyone who is outdoors and could work in an environment where wildfire smoke could be present*):

- Identify harmful exposure to airborne particulate matter from wildfire smoke at the start of each shift and periodically thereafter by checking the AQI for PM 2.5 in regions where workers are located.
- Reduce harmful exposure to wildfire smoke if feasible, for example, by relocating work to an enclosed building with filtered air or to an outdoor location where the AQI for PM 2.5 is 150 or lower.
- If employers cannot reduce workers' harmful exposure to wildfire smoke so that the AQI for PM 2.5 is 150 or lower, they must provide:
  - Respirators such as N95 masks to all employees for voluntary use, and
  - Training on the new regulation, the health effects of wildfire smoke, and the safe use and maintenance of respirators.

# GISO 5141.1 Protection from Wildfire Smoke

- (2) *The following workplaces and operations are exempt from this section:*
  - (A) Enclosed buildings or structures in which the air is filtered by a mechanical ventilation system and the employer ensures that windows, doors, bays, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
  - (B) Enclosed vehicles in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
  - (C) The employer demonstrates that the concentration of PM2.5 in the air does not exceed a concentration that corresponds to a current AQI of 151 or greater by measuring PM2.5 levels at the worksite in accordance with Appendix A.
  - (D) Employees exposed to a current AQI for PM2.5 of 151 or greater for a total of one hour or less during a shift.
  - (E) Firefighters engaged in wildland firefighting.
- (3) For workplaces covered by this section, an employer that complies with this section will be considered compliant with sections 5141 and 5155 for the limited purpose of exposures to a current AQI for PM2.5 of 151 or greater from wildfire smoke.

# Steps Employers Must Take

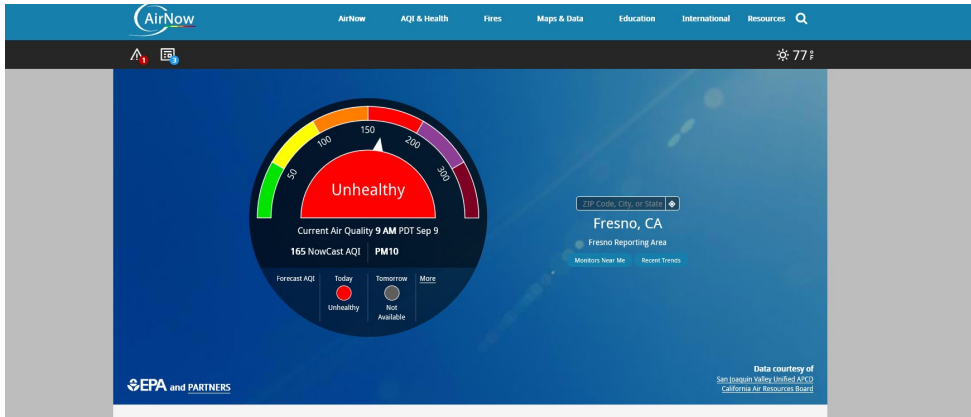
- **Communication:** Inform employees of the AQI for PM2.5 and the protective measures available to them.
- **Training and Instruction:** Provide effective training and instruction to all employees on the information contained in [Section 5141.1 Appendix B](#).
- **Modifications:** Implement modifications to the workplace, if feasible, to reduce exposure. Examples include providing enclosed structures or vehicles for employees to work in where the air is filtered.
- **Changes:** Implement practicable changes to work procedures or schedules. Examples include changing the location where employees work or reducing the amount of time they work outdoors or exposed to unfiltered outdoor air.
- **Respiratory Protection:** Provide proper respiratory protection equipment, such as disposable respirators, for voluntary use.
  - To filter out fine particles, respirators must be labeled N-95, N-99, N-100, R-95, P-95, P-99, or P-100, and must be labeled as approved by the US National Institute for Occupational Safety and Health (NIOSH).

## Important Note Regarding N-95 Masks

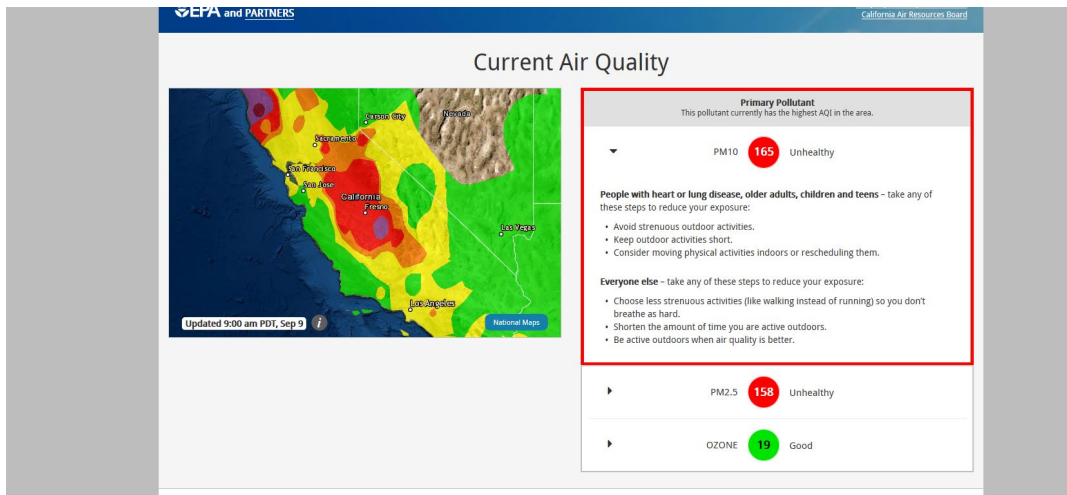


- The state acknowledges the difficulty in obtaining N-95 masks and is working on locating alternatives to the N-95 masks.
- Please Note: “Employers are obligated to protect their outdoor workers and must evaluate the health hazards posed by wildfire smoke,” said Cal/OSHA Chief Doug Parker. “If employers cannot move operations indoors where air is adequately filtered and they do not have access to respiratory protection, they may need to halt operations until the outdoor air quality improves.”  
*DIR News Release 2020-71*

# Resources: EPA and Partners website



- Examples of the types of information available at [www.airnow.gov](http://www.airnow.gov)



# Cal/OSHA Wildfire Smoke Regulation: Resources

Important websites to check on conditions:

[www.epa.gov](http://www.epa.gov)   [www.airnow.gov](http://www.airnow.gov)   <https://ww3.arb.ca.gov/capcoa/dismap.htm>

<https://www.arb.ca.gov/aqmis2/ARBaqmap.php>



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### WOTUS Rule Repealed

EPA and the Department of the Army repealed the 2015 Waters of the United States rule, ending regulatory patchwork and uncertainty across the country.

[Read the news release](#)

[Learn more about the WOTUS rule](#)



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# Questions ?