

# Oregon weighs new rules to protect workers

*Climate change makes wildfires, extreme heat more prevalent*

BY JAMIE GOLDBERG

The Oregonian

As the Riverside fire raced through Clackamas County last September, Tammy Beckemeyer arrived for the night shift at the Fred Meyer distribution center in Clackamas.

The facility was in a Level 2 evacuation zone and nearby residents were preparing to leave at a moment's notice. Smoke cascaded into the building through the dock doors as Beckemeyer worked, stinging her eyes and making it hard to breathe.

Beckemeyer, the shop steward who serves as a union representative, said Fred Meyer offered employees KN95 masks by request to help with the smoke but still required them to work long hours and meet their usual hourly quotas. (A Fred Meyer spokesperson said the company offered breaks in accordance with its union contract and local and federal labor laws.)

"Conditions were horrific," said Beckemeyer, 55. "They look at us as essential employees, so they don't give us extra breaks, you're timed on all your assignments, and that time doesn't stop."

Oregon, anticipating climate change will make wildfire haze and extreme heat more prevalent in the years ahead, is developing new rules to protect workers from their effects. But it is unlikely that any permanent mandate will be in place by this year's fire season or its hottest months.

Gov. Kate Brown directed the Oregon Occupational Safety and Health administration, or Oregon OSHA, and the Oregon Health Authority to develop a proposal for standards to protect employees from excessive heat and wildfire smoke back in March 2020. It was part of a broader executive order mandating that certain state agencies engage in efforts to reduce greenhouse gas emissions and mitigate the impacts of climate change.

Oregon OSHA and the Oregon Health Authority were originally supposed to submit a proposal for the new workplace rules by next month, but the state extended that deadline until the end of September due to the pandemic. The agencies are now in the early phase of drafting those rules.

Aaron Corvin, a spokesperson for Oregon OSHA, said the agency might adopt a temporary rule ahead of wildfire season this summer to ensure requirements are in place to protect workers from smoke, but he said it is unlikely the state will adopt any temporary rule regarding extreme heat before the summer.

Oregon OSHA will host listening sessions Thursday and next Tuesday to give workers the opportunity to share their



Jeff Manning/The Oregonian

**The five-alarm Chehalem Mountain-Bald Peak fire spanned parts of Washington and Yamhill County.**

thoughts on the potential rules and their own experiences working in excessive heat and amid wildfire smoke. They'll likely hear from workers and their advocates that the rules can't come soon enough.

"Workers should not be in a position of choosing between their health and a paycheck," said Nora Apter, climate program director at the Oregon Environmental Council. "We're at the table to ensure that doesn't happen in the future."

### Wildfire smoke

The air quality in many parts of Oregon reached hazardous levels last September as wildfires raged throughout the state. Air quality levels in some places topped 500, the very highest measurement, signifying an immediate risk to public health.

In California, when the Air Quality Index reaches an unhealthy level of 151, employers are required to either halt operations or provide workers with particulate respirators, such as N95 masks.

Oregon didn't have a similar mandate last year.

Instead, individual employers decided on their own how to respond to the hazardous conditions. While some sent workers home, others told their employees to remain on the job. Complicating the situation was the fact that N95 respirators were in short supply due to the coronavirus pandemic, leaving many workers with few options to protect themselves.

Some farmers paused oper-

ations, but others kept workers on the job, knowing any delay could risk their harvest. While some farmworkers were provided N95 masks, others said their employers didn't take extra precautions to protect workers.

Fernando Gutierrez, who oversees a farmworker outreach and advocacy program at the Oregon Employment Department, told The Oregonian/OregonLive last September that he spoke to several women who fell ill and vomited while working at a farm in Canby during the wildfires. Those women had not been provided respirators by their employer.

A warehouse worker, whom The Oregonian/OregonLive is not naming because he feared retaliation from his employer, said he could see smoke and ash in the air as he worked downwind from the Holiday Farm fire last September. He said it was several days of hazardous conditions before his employer offered N95 masks. Some workers developed coughs due to the air quality, he said.

The worker ultimately opted to take several days off because of a health condition. On his third day at home, he said his employer started to pressure him to come back, prompting him to seek a doctor's note because he feared he might otherwise lose his job.

"I would like to see some common-sense safety rules and stricter enforcement," he said. "When the air quality reaches

a certain threshold, employers should be required to provide N95s, provide ventilation. If they can't bring down the particulates in the air with a ventilation system, then workers shouldn't be working. We're talking about human lives."

### Extreme heat

Last year's wildfires were extraordinary in their scale and impact, but farmworkers and others who work outside routinely face a much more common hazard: a very hot day.

Ira Cuello-Martinez, climate policy associate at PCUN, Oregon's largest farmworker union, said he has heard stories from workers who have had to duck behind cars and trucks during their breaks simply to access shade during the hottest days of the summer. In other cases, he said workers have complained that they haven't been provided breaks or water, even as temperatures topped 90 degrees.

Cuello-Martinez said many farmworkers wear layers, even when it's hot, to protect their skin from the sun. Many are also paid by how much they pick, incentivizing them to work quickly even in extreme heat. That can put them at significant risk for heat-related illness.

Agricultural workers, fishers, forestry workers and hunters account for 20% of heat-related deaths nationwide, according to the Union of Concerned Scientists, a nonprofit science advocacy organization.

And the frequency of very hot days is increasing in Oregon. Since 1940, the average number of days exceeding 90 degrees has increased by over eight days per year in Portland and 21 days per year in Medford, according to The Oregon Climate Change Research Institute's biennial report. Portland set a record in 2018, when 31 days exceeded 90 degrees.

"There are some simple solutions: providing canopies to provide shade, giving workers more breaks and space to cool

down," Cuello-Martinez said. "We understand harvesting crops is time sensitive, but at the same time, we can't overwork and exploit workers to get the most productivity out of them. It's dangerous."

Apter, of the Oregon Environmental Council, said the state at a minimum needs to ensure that employers provide access to drinkable water, shade or cooling stations, regular breaks and time to acclimate to heat. She said those working during wildfires should be provided with respirators and the option to relocate to a safer location.

She also wants the state to apply its rules to all workers and require that employees and employers are trained on the signs of heat strain and respiratory distress. She said those trainings should be conducted in multiple languages.

Oregon OSHA has published early drafts of possible wildfire and heat rules that focus on training employers and employees, ensuring that workers have access to shade and drinkable water and making sure employees have access to respirators when air quality deteriorates.

Samantha Bayer, policy counsel for the Oregon Farm Bureau, which represents nearly 7,000 farmers and ranchers, said the farm bureau supports the state's attempts to adopt rules to guide employers during wildfires and in extreme heat.

However, Bayer said the farm bureau doesn't want to see the state adopt overly prescriptive rules that would be difficult for employers to implement, such as mandating that respirators are fit tested or requiring that water provided to employees is a specific temperature.

She said she would also be concerned if the state adopted requirements that employers shut down operations in certain conditions, or set too low of a bar for air quality thresholds before rules kick in. She said she would like to see the state

provide assistance to help farmers secure N95 masks and any other equipment they would need to provide workers.

"I think we definitely understand the need to have parameters for employees and employers to follow when air quality gets to a certain level that makes it hazardous to work outside or when temperatures rise to a level that could pose possible risks to employees," Bayer said. "But they need to be achievable, which is something we struggled with when OSHA adopted COVID-19 rules."

### Meaningful enforcement

Kate Suisman, an attorney and the campaigns coordinator at the Northwest Workers' Justice Project, said her organization has been pushing the state to adopt rules to protect workers from extreme heat for years and is happy to see the rulemaking process moving forward.

Suisman, though, said many workers are skeptical about whether the rules will make a meaningful difference.

Oregon OSHA only inspects 2.5% of workplaces in a typical year and can dismiss complaints without visiting a workplace, though the agency does prioritize visiting high-risk workplaces like farms.

Oregon also has a history of handing out fines to employers who violate rules that are significantly smaller than the national average, according to annual reports from the U.S. Department of Labor.

Violations are often downgraded on appeal, too. A total of 1,629 Oregon OSHA violations were resolved through the appeals process over the last three years, with 43% amended on appeal and 12% rescinded, according to Oregon OSHA data.

"These rules are only step one," Suisman said. "They will hopefully empower workers to be able to tell their supervisors, 'We have the right to these protections.' But then there also has to be meaningful enforcement."

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