

California Work Safety Agency Hamstrung by Chronic Understaffing

Deep Dive

- Recent Palisades wildfire shows ongoing gaps in enforcement
- Uniform compliance proves challenging in agriculture sector

Smoke from wildfires this January made it difficult for Flor Zaragoza to see or breathe, and about three hours into her shift at an Oxnard, Calif. farm, caused her to have a coughing attack.

The foreman at the farm told Zaragoza he only had one mask available to protect her and about 40 other workers from the smoke caused by the Palisades Fire, which raged for weeks earlier this year. She was allowed to leave work rather than continue to face the smoke, but felt the effects for days.

“After I had my really bad cough attack, there was two days where I had difficulty breathing,” Zaragoza said.

California is one of few states with a wildfire smoke rule, which requires employers to provide N95 respirators to their workers at certain air quality levels. However, the state hasn’t hired enough people to enforce this and other workplace safety policies to hold employers accountable for breaking the rules.

Wildfire smoke is harmful primarily because it contains airborne particulate matter known as PM2.5—which can trigger a myriad of health problems, including but not limited to: coughing, chest pains, headaches, and breathing difficulties. More serious impacts on the lungs and heart are also possible.

California’s Division of Occupational Safety and Health—the largest state workplace safety enforcer in the nation—covers almost all of the state’s 19 million workers, but crippling vacancies and understaffing woes are preventing the agency from effectively enforcing its robust standards, according to worker safety advocates in the state.

"It doesn't matter really what the regulations are, how strong they are—if you don't have anybody to actually enforce them," said Garrett Brown, who previously worked in Cal/OSHA for two decades as an industrial hygienist and later special assistant to the agency's chief.

Losing Staff

Over a six-month period in 2023 Cal/OSHA only added two staff members, but lost 10. The vacancy rate was 35% for enforcement positions with 228 of 349 positions filled, according to a US Occupational Safety and Health Administration review.

Cal/OSHA didn't respond to a request for comment.

In self-published data from Cal/OSHA the agency notes an overall vacancy rate of 23% as of December of last year. The agency says it has about 69% of positions filled for enforcement, but Brown says this doesn't paint an accurate picture of actual inspectors at the agency.

"They increase the number of engineers, but they're not actually all in inspector positions," Brown said.

Last year, the chair of the California assembly's Labor and Employment Committee said she would seek an audit of CAL/OSHA's authority after a hearing where farmworkers described regulators as understaffed, unresponsive, and out of touch. Gov. Gavin Newsom (D) proposed at the time providing agencies with an additional \$8.3 million annual budget for three years to educate rural workers on their rights.

Committee Chair Liz Ortega (D) says the attention has primarily focused on short-staffing, but she's also noticed bad actors face almost no penalties and negotiate fines down to mere pennies on the dollar.

"The goal of my audit is to learn how and why this is happening, so we can put a stop to it and make sure employers are keeping workers safe," she told Bloomberg Law.

Even still, Newsom's administration hasn't made an effective effort to backfill the drove of Cal/OSHA retirees either, Brown added.

Cal/OSHA received \$28.9 million in federal funds federal fiscal year 2023, bringing its budget that year to \$96.6 million.

The California State Auditor is assessing Cal/OSHA's processes of investigations and whether the agency properly used funds budgeted for vacant staff positions—among other things. The audit is expected to be released this summer, according to the state auditor's website.

Federal OSHA Assessment

OSHA conducts an evaluation of the 29 state plans each fiscal year and California's showcased how the agency struggled with staffing.

OSHA acknowledged the state leads the nation in addressing emerging hazards, but the state agency's inability to fill staff vacancies in its enforcement and consultation programs on time persists, according to its 2023 Federal Annual Monitoring and Evaluation report on the state agency.

Cal/OSHA conducted health sampling—used by inspectors to assess potential workplace contaminants and associated worker exposures—at a rate of 0.5% versus a national rate of 4.3%—which is likely to impact the state agency's ability to identify and cite employers for health hazards, according to OSHA.

The work was slowed when the Department of Industrial Relations, which does the sampling, lost its ability to directly hire from 2018 to 2021. The decision followed a state auditor's report of "gross misconduct" by a former state government administrator who allegedly circumvented California's civil service employment process in hiring and promotion to benefit her daughter.

The new lengthy and complex merit-based hiring process that's been put in place steers away qualified workers who aren't able to wait through a long drawn out process, Brown said.

Counter to Weak Enforcement

Employers in California are legally required to provide workers with personal protective equipment when the Air Quality Index, a measurement of the pollutants in the air, reaches the level considered unhealthy to breathe and to communicate safety standards in the language workers understand.

Despite having a law on the books, many employers aren't complying, worker safety advocates say.

"We definitely heard very clearly and right away that many farm workers were not receiving masks, even though the regulations were calling for the appropriate PPE to be provided," said Roman Pinal, national vice president for United Farm Workers, referring to personal protective equipment.

Pinal says UFW distributed N95 masks to farmworkers during the high alarm period of the Palisades Fire. UFW is pushing for stronger enforcement of these standards to ensure 100% compliance for the safety of farm workers.

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