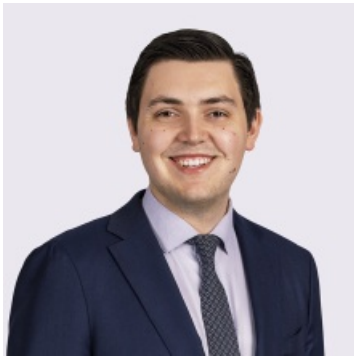


OSHA Proposes Expansion of Workplace Protections for Emergency Responders

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The Occupational Safety and Health Administration (OSHA) has proposed a [rule](#) to replace and expand its [Fire Brigades Standard](#). The proposed Emergency Response Standard would impose new requirements on employers with employees who respond to workplace incidents as a secondary aspect of their work duties. Such employers include manufacturers, warehouse, construction companies, retailers, and others who might have employees designated to respond to emergencies.

The proposed rule may sound like it would apply only to municipal entities, but it would cover a broad range of public and private workplaces, as well as volunteer emergency responders. OSHA estimates the proposed rule will affect 22,552 emergency service organizations and workplace emergency response teams and more than 1.1 million first responders. Any organization that employs first responders or support a trained internal emergency response team will have new training and preparedness requirements.

According to OSHA, the rule's implementation could prevent 11,000 injuries and 61 fatalities annually.

The proposed rule's comment period was extended to June 21, 2024.

Current Fire Brigades Standard

Promulgated in 1980, OSHA's Fire Brigades Standard (29 C.F.R. 1910.156) created detailed regulations for employers that employ their own fire brigade. A fire brigade is defined as an organized group of employees who are knowledgeable, trained, and skilled in firefighting operations. Under the Fire Brigades Standard, any such employer must define their fire brigade's structure, provide education and training to the brigade's members, and sometimes supply them with protective clothing. Currently, other workplace emergency responders are not included in the Fire Brigades Standard.

Proposed Rule Goes Beyond Fire Protection

OSHA's proposed Emergency Response Standard seeks to update, centralize, and broaden the Fire Brigades Standard and other standards covering emergency responders. The proposed rule would add categories of employees beyond those involved in firefighting operations. Under OSHA's proposed rule, employees performing emergency medical services (EMS) and technical search and rescue (TSAR) will also be included. The proposed rule would expand to add two additional categories of employers. The first is an emergency service organization (ESO), which is an organization that provides one or more of firefighting, EMS, and urban search and rescue as a "primary function." The second is a workplace emergency response employer (WERE), which is an employer with a workplace emergency response team comprised of employees who, "as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide" one or more of firefighting, EMS, and TSAR services.

Related Services

Workplace Safety and Health

The Emergency Response Standard excludes employers “performing disaster site clean-up or recovery duties.”

Impacted employees would include:

- Firefighters employed at private employer facilities (full-time firefighters at oil and gas facilities);
- Privately employed EMS personnel;
- Privately employed technical rescue workers;
- State and local government first responders in state plan states;
- Federal firefighters and emergency responders (law enforcement agencies are not covered by the proposed rule); and
- Employees trained to provide emergency response (EMS, fire, or rescue) as a secondary responsibility. This includes facility emergency teams if they are providing care beyond first aid.

Among other requirements is the drafting of an emergency response program (ERP). The ERP is a document prepared by the WERE or ESO to ensure it is “prepared to safely respond to and operate at emergency incidents and non-emergency situations, and to provide for the occupational safety and health of team members and responders.” The ERP is separate from a risk management plan, another new requirement for an ESO or WERE that requires these organizations to outline risks to its team members and responders associated with various aspects of employment. Yet another written plan employers must prepare is the pre-incident planning (PIP), which has different requirements for an ESO or WERE but is meant to prepare employees for common or hidden hazards. This would be a new requirement for employers that OSHA adopted from the National Fire Protection Association (NFPA).

An ESO or WERE must also establish minimum medical and physical requirements based on the type and level of services, provide behavioral health and wellness resources (at minimum diagnostic assessment, short-term counseling, crisis intervention, and referral services), and establish and implement health and fitness programs that allow responders to maintain the level of fitness to safely perform their job functions. Additionally, the proposed rule outlines required training, facility preparedness, equipment and personal protective equipment, vehicle preparedness, and post-incident analysis.

Finally, the proposed rule also requires employers to implement an incident management system (IMS) and standard operating procedures (SOP) for emergency events. The IMS is defined as “a system used for managing and directing incident scene operations and activities” that “includes establishing functions for managing incidents, describes the roles and responsibilities to be assumed by team members and responders, and standard operating procedures to be utilized.” The IMS must be based on the type and level of services established, the facility or community vulnerability assessment, and the PIPs described above. Covered employers must also develop SOPs for emergency events based on the events the WERE or ESO are reasonably likely to encounter, the types and levels of services, and the community or facility vulnerability assessment.

Practical Implications for Emergency Responders, Employers

Firefighters, EMS personnel, and technical rescue responders have been subject to various regulatory standards outside of OSHA’s purview under the Fire Brigades Standard for many years. The proposed rulemaking incorporates many existing standards

promulgated by the Department of Homeland Security through the Federal Emergency Management Agency (FEMA) and NFPA, which have historically dictated training, equipment, and competency requirements.

The proposed federal standard does not impact most volunteer firefighters or EMS personnel in federal OSHA states. The proposed rule covers volunteers who derive “significant indirect benefits,” which is defined case-by-case and could include a variety of employee benefits such as pensions, healthcare, or housing. However, there are 29 states and territories under state plans where public employees, including firefighters and other emergency responders, may be categorized as employees even when working as volunteers.

Additionally, federal employees categorized as emergency responders will be impacted by the proposal. This includes U.S. Forest Service (USFS) employees, but OSHA’s proposal for updating the Fire Brigades Standard is unclear about firefighters in other federal agencies. Although the proposed rule does not specifically name organizations other than USFS, firefighters employed by the Department of Interior as well as firefighters employed by state governments in state plan states and states that use prison inmates as firefighters in state plan states will be affected. OSHA does not currently regulate incarcerated firefighters in non-state plan states.

Understanding the specific requirements for private, government, and volunteer responders will be critical to addressing the additional regulatory burden. Employers in the public and private sector should review their department practices, trainings, certifications, and credentialing to ensure they are up to date with FEMA and NFPA requirements. The proposed rule creates a plethora of novel plans and policies employers of emergency responders must have in place. Attorneys in our nationwide Workplace Safety and Health practice group are here to help employers with questions or need legal guidance on navigating this new terrain to ensure compliance.

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