



Speeches

OSHA STANDARD FOR EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

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Call-in Press Conference Remarks As Prepared for

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**To Introduce the New
OSHA STANDARD FOR EMPLOYER PAYMENT
FOR PERSONAL PROTECTIVE EQUIPMENT**

Wednesday, November 14, 2007

GOOD AFTERNOON. Thank you for calling in for this announcement from OSHA.

Today in the Federal Register, OSHA published a final rule on an important workplace safety and health issue.

Under this rule, employers will provide, at no cost to employees, almost all personal protective equipment - or, "PPE" - when the PPE is used to comply with OSHA standards.

We will examine the new standard - and the exceptions to the rule - during our discussion this afternoon.

Let me emphasize that the Department of Labor is responsible for promoting the health, safety and welfare of America's working men and women; and within the Department of Labor, OSHA is responsible for developing standards and guidance to help employers meet their legal responsibility to protect their employees.

PURPOSE OF DEVELOPING THE RULE

Over the years, there has been some confusion about whether or not employers are required to pay for personal protective equipment. Publishing this rule accomplishes three objectives:

- First, it implements the underlying requirement in the OSH Act that employers pay for workplace safety and health.
- Second, it creates a clear and consistent policy across OSHA's standards, reducing confusion about the items that employers are required to pay for.
- Third, and most important, OSHA estimates that the rule will result in over 21,000 fewer occupational injuries per year - such as head, foot and eye injuries, lacerations, and chemical burns that, in many cases, may be so severe that they can leave an employee permanently disabled.

IMPACT ON EMPLOYEES AND EMPLOYERS

This significant reduction in injuries through employer-payment of PPE is also expected to save society over \$200 million per year in such forms as reduced direct costs, including medical and insurance bills. This does not include additional benefits such as reduced pain and suffering for employees.

It is important to note that employers currently pay for 95 percent of PPE. Requiring payment for the additional 5 percent is expected to result in a cost of \$85 million to employers. A large percentage of these costs are due to cost shifting from employees to employers.

This shift is important. When employees pay for their own PPE,

- they are likely to purchase the wrong equipment,
- they may use the PPE beyond its expected service life, or
- they may avoid purchasing the equipment at all.

When employers pay for PPE, they are more likely to select the right PPE for the hazards present in their workplaces. When employers pay for PPE, we have found that they also make sure that the equipment is maintained and replaced as necessary, and generally take more responsibility for PPE selection and use. It is this improvement in PPE usage that is expected to result in fewer injuries and fatalities.

PARAMETERS OF THE RULE

My next point is this: The final rule that we are announcing today addresses only the issue of who pays for PPE. The rule does not require employers to provide PPE where none has been required before.

In the simplest terms, the rule for employer payment of PPE only applies when equipment is used by an employer to comply with one of the PPE requirements in OSHA's standards. In some cases, the OSHA rules describe the exact PPE that is required, and in other cases the requirements are more general.

The rule contains several exceptions for ordinary safety-toe footwear and prescription safety eyewear, logging boots, ordinary clothing, and ordinary weather-related gear. The rule also addresses employee-owned PPE and replacement PPE. I will explain these exceptions in a moment.

HISTORY OF THE RULE

OSHA first issued a proposed rule for employer payment of PPE eight years ago, in March 1999. Through public hearings and comment periods, OSHA has worked to develop a standard that will provide clarity and fairness for employers and employees. Today, we believe that the Agency has succeeded.

While the clarifications in the new rule have added several paragraphs to the regulatory text, the rule provides employees no less protection than was provided by the 1999 proposed standard. At the same time, the rule clarifies the responsibilities of employers in a way that sets a reasonable PPE payment policy.

DETAILS OF THE RULE

I know that the journalists listening in on today's announcement want to ask questions. Before we do, let us look in more detail about the rulemaking and the individual provisions of the standard.

First, I would like to discuss the scope of the standard, both in terms of which employers and employees are covered and the types of equipment that are included.

INDUSTRY APPLICATIONS

The rulemaking affects most of OSHA's PPE standards. The rulemaking includes regulatory text tailored to for Part 1910 General Industry standards, Part 1926 Construction standards, Part 1915 Shipyard standards, Part 1917 Marine terminal standards, and Part 1918 Longshoring standards.

The regulatory text is almost the same for each of the industries. There are only small changes from one industry to the next. For example, the exception for logging boots in the general industry standard is not found in the construction or shipyard standards.

I would also like to emphasize that the rule only addresses the issue of who pays for PPE, not the types of PPE an employer must provide. What is or is not a violation of an OSHA PPE equipment requirement is unchanged by the rule.

UNIFORMS AND SANITARY CLOTHING

Next, I wish to make it clear that the rule only requires payment for PPE. It does not require payment for uniforms, caps, or other clothing worn solely to identify a person as an employee.

The rule also does not require payment for items worn to keep employees clean for purposes unrelated to safety or health. For example, blue jeans, aprons or other apparel, when worn solely to prevent clothing and/or skin from becoming soiled.

The rule also does not require payment for items worn for product safety, consumer safety, or patient safety and health, rather than employee safety and health. For example, some employers require food service employees to wear hairnets for food safety purposes.

1910 PROVISIONS - WHEN PPE IS REQUIRED

Now I would like to walk through the standard and explain the individual provisions. I will use the 1910

version, but the policies will be the same for all five industries.

The general payment provision, 1910.132(h)(1) states that payment is required for any PPE used by an employer to comply with one of the PPE requirements in OSHA's standards. If the PPE is not required, then the employer is not required to pay for it. When an employer selects a specific type of PPE to be used at the workplace to comply with a standard, the employer is required to pay for it.

SAFETY-TOE FOOTWEAR

The next paragraph, 1910.132(h)(2) states that the employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

If the employer requires employees to keep non-specialty safety-toe protective footwear and non-specialty prescription safety eyewear at the workplace, the employer must pay for the items.

If the safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and prescription safety eyewear are non-standard "specialty" items, the employer must pay for them. For example, prescription eyeglass inserts for full-facepiece respirators, or non-skid shoes for floor strippers are specialty items so payment will be required.

METATARSAL GUARDS

Paragraph 1910.132(h)(3) addressed metatarsal protection.

OSHA allows employers to use metatarsal guards or footwear with built-in metatarsal protection when metatarsal protection is needed in the workplace. If the employer requires employees to wear metatarsal shoes or boots, the employer is required to pay for the footwear.

However, when the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to pay for the metatarsal shoes or boots.

Employers may contribute to the cost of metatarsal shoes or boots should they choose to do so. Some employers currently offer their employees a choice between using a metatarsal guard provided and paid for by the employer or a metatarsal shoe or boot with some portion of the cost of the shoe or boot paid for by the employer, essentially establishing an allowance system, and this is an acceptable practice.

LOGGING BOOTS

Under 1910.132(h)(4) the employer is not required to pay for the logging boots required by 29 CFR §1910.266(d)(1)(v). The logging standard exempts these boots and the regulatory text here simply reflects that exemption.

EVERYDAY CLOTHING & WEATHER/TEMPERATURE ISSUES

Under 1910.132(h)(4) the employer is not required to pay for everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots. This exception applies even when the employer requires employees to use these items, and the clothing provides protection from a workplace hazard.

Similarly, under 1910.132(h)(4), the employer is not required to pay for ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

If ordinary weather gear is not sufficient to protect the employee, and special equipment or extraordinary clothing is needed to protect the employee from unusually severe weather conditions, the employer is required to pay for the protection. Clothing used to protect employees from artificial heat or cold is not part of this exception. For example, employees working in a freezer warehouse may need heavy coats. In this situation, the employer is required to pay for the protection.

REPLACEMENT PPE

Paragraph 1910.132(h)(5) addresses payment for replacement PPE. It states that the employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

The new standard does not address how often PPE is to be replaced. Replacement is determined by each standard that requires PPE.

EMPLOYEE-OWNED EQUIPMENT

The next paragraph addresses employee-owned equipment. It states that where an employee provides adequate protective equipment which he or she owns and brings to the worksite, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. However, the employer shall not require an employee to provide or pay for his or her own PPE, unless

the PPE is excepted by another paragraph.

During the rulemaking, some employers stated that it is traditional in some industries for employees to supply their own PPE, especially when the employees move frequently from job to job. This part of the rule recognizes these traditions and does not require employers to pay for PPE in this situation. However,

- The employee's use of his or her own PPE must be completely voluntary.
- The employee can withdraw use of his or her own PPE at any time.
- If the employer allows an employee to use PPE they already own, the employer is still responsible for making sure the PPE is adequate, properly maintained, and sanitary, under the applicable PPE standard.

IMPLEMENTATION AND ENFORCEMENT

The last provision in the rule provides an enforcement deadline of six months from the date of publication. This six-month deadline will allow employers time to change their existing PPE payment policies to comply with the final rule.

Finally, the standard contains a note stating that if another rule specifies payment, the other rule will prevail.

The rule does not specify the method that employers must use to pay for PPE, and employers can choose any method that works for them. Many employers use allowances or reimbursement systems, or maintain a stock of PPE and hand it out to their employees. All these methods are acceptable, as long as the employee receives the PPE at no cost.

OSHA believes that the rule will benefit employers and employees alike by resolving this longstanding and contentious issue. We believe the rule will result in fewer injuries and fatalities, and we look forward to these safety benefits.

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