



Electronic Dispatch

OSHA Information Memo

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OSHA REQUIRES EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

The Occupational Safety and Health Administration (OSHA) recently amended its regulations to mandate that employers pay for personal protective equipment ("PPE") that is required for job performance. The rule becomes effective on February 13, 2008, but employers will have until May 15, 2008 to implement the payment requirements.

While the new rule is seemingly straightforward and uncomplicated, the rule-makers have created a thicket of thorny issues that will undoubtedly create confusion for employers, employees, and union representatives.

Many OSHA standards require the use of protective equipment including PPE. While some of these standards require the employer to provide the equipment, others are silent on the issue. The new regulation fills the void with the following comprehensive regulation: "[T]he protective equipment, including personal protective equipment (PPE), used to comply with [the OSHA regulations], shall be provided by the employer at no cost to employees." This blanket requirement for payment of required PPE has five categories of exceptions, which outline the circumstances in which employers need not pay for PPE. The exceptions are: (1) safety shoes and boots, and prescription safety glasses, provided employees may wear the items off the job site. This exception covers only "non-specialty" footwear and eyewear, so that if particular job functions require, for example, rubber boots with steel toes, or a prescription lens insert in a respirator, welding or diving helmet, the employer must pay for such items. Further, if safety boots or shoes may not be worn off the job site, because of chemical contamination, or other similar reasons, the exception does not apply; (2) if the employer provides metatarsal guards, and allows the employee to use shoes or boots with metatarsal protection, the employer need not pay for the shoes or boots; (3) an employer is not required to pay for logging boots, everyday clothing, or clothing, skin creams or sunglasses to protect against weather. This exception includes winter coats, jackets, gloves, raincoats, etc.; (4) the employer must pay for replacement items of required PPE, except when the employee has lost or intentionally damaged the PPE; and (5) the employer is not required to pay for PPE that an employee owns.

The application and interpretation of the new standard and these exceptions are likely to raise issues for employers. For example, in many cases, a winter coat will be within the exception for clothing to protect against the weather for which the employer will not be required to pay, but cold weather gear must be provided at the employer's cost for employees working in "unusually severe weather conditions" or artificially-controlled environments, such as freezers.

Work gloves are deemed to be PPE and must be paid for by the employer, although ordinary winter gloves are not. Hair nets, surgical masks, aprons and other like items required for sanitary reasons or patient health are not PPE, and the OSHA standard does not require employers to pay for such items. Instead, the new standard applies to items that are required for safe and healthful job performance.

Employers are well advised to take a proactive approach to this new standard; the following steps are recommended:

- (1) Prepare an inventory of all PPE used by employees of the establishment and identify any items that are not required for job performance.
- (2) Determine the current policy for employer payment of all PPE, whether required for performance or used voluntarily.

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- (3) For employees who are not represented by a union, prepare a draft policy and submit it to the safety committee (or other appropriate review committee including affected employees) for discussion. The policy should expressly address the replacement of PPE.

For employees subject to union representation, the draft PPE policy may similarly require notice and an opportunity for the union to request bargaining, depending on the terms of the parties' labor agreement.

- (4) Following appropriate discussions or negotiations, fix a date for implementation not later than May 15, 2008.
- (5) Employers in New York must bear in mind that the New York Labor Law prohibits deductions from wages for lost or damaged items needed for job performance. Although the new OSHA regulation states that employers may seek payment from employees for intentionally damaged or unreasonably lost items, the employer in New York may not deduct those costs from wages. Misuse of PPE, instead, should be covered by the employer's discipline policy.
- (6) Maintain documentation of this policy implementation process as well as documentation of PPE issued to individual employees.

If you have any questions about this new requirement, or need assistance in complying with this new requirement, please contact:

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