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## **Employer Payment for Personal Protective Equipment**

The Occupational Safety and Health Administration (OSHA) recently released new provisions regarding employer payment for personal protective equipment (PPE) for workers. The new rules become effective May 15 and do not change the circumstances under which PPE is required or the nature of the equipment appropriate for the hazards encountered. The primary reason for the new rule is to clarify and reduce to regulatory language the requirement that employers are obligated to pay for PPE with some limited exceptions and to specifically set out rules with respect to employee-owned PPE, replacement PPE, everyday clothing and weather-related clothing.

### **Background**

PPE is required by many OSHA standards that also describe the nature of the PPE required and, in some cases, the minimum design and manufacturing specifications to which the PPE must conform. Many OSHA standards require employers to provide PPE to workers who require it, but most provisions are silent as to who must pay for PPE.

In a 1994 memorandum to its field staff, OSHA established a nationwide policy for the issue of payment for required PPE titled "Employer Obligation to Pay for Personal Protective Equipment." As the title clearly suggests, OSHA stated an employer must provide and pay for all required PPE except in some limited instances. The exceptions involved PPE of a more personal nature that an employee could use off the job, such as steel-toe safety shoes. The exceptions to the general rule of employer payment would be left to labor/management negotiations. However, in 1997, the Occupational Safety and Health Review Commission vacated a citation against an employer based on the policy outlined in the OSHA memorandum because it conflicted with earlier letters of interpretation from the agency. OSHA shortly thereafter initiated the proposed rulemaking process to settle the issue decisively.

### **New Rule**

The proposed PPE rule issued by OSHA uses the precepts outlined in the 1994 memorandum as the basis for the new rulemaking. A uniform requirement applicable to all standards that require PPE places the burden of payment on employers except for some safety-toe footwear, logging boots and prescription safety glasses. OSHA relies on

the language and legislative history of the Occupational Safety and Health Act to conclude that Congress intended employers to pay for PPE because the statute makes employers solely responsible for compliance with occupational safety and health standards. OSHA states PPE is a form of hazard control not unlike engineering or administrative controls for which the principle of employer payment is well settled.

Additionally, OSHA reasons employee protection would be better served by a rule that requires employer payment because:

- Employers are more knowledgeable about workplace hazards and are more capable of selecting the correct PPE
- Employee misuse or non-use of PPE would be reduced by employers maintaining control over its selection, issuance and use
- Employee cooperation with PPE usage would be more likely if the equipment was provided without charge

The final rule published by OSHA follows the basic concepts and rationales of the proposed rule and clarifies the exceptions with a little more specificity:

- An employer is not required to pay for PPE that an employee asks to use that is different from PPE the employer has provided at no cost.
- An employer is not required to pay for ordinary safety-toe footwear or prescription safety eyewear provided the employer does not restrict use of that PPE off the job site.
- An employer is not required to pay for safety footwear with integrated metatarsal (instep) protection if the employer pays for metatarsal guards that attach to the shoes.
- An employer is not required to pay for everyday clothing. OSHA acknowledges that long-sleeve shirts, long pants, normal work boots and other similar clothing often serve as PPE. Clothing used solely for weather protection, such as jackets or parkas, also is excluded from the employer-payment requirement.
- Ordinary hand tools are not considered PPE under this rule.
- An employer may require an employee who loses or intentionally damages PPE to pay for the replacement equipment. Reasonable and appropriate disciplinary measures by the employer, proportionate to the employee offense, are permissible to ensure employee compliance with PPE care, use and maintenance requirements.
- An employer is required to pay for replacement PPE once its useful service life has been exceeded.
- Employees occasionally may want to use their own PPE. If an employer allows it, employees may do so under the new rules but the employer is not required to pay for the PPE. An employer may not require employees to provide their own PPE or make them pay for it. Employees' use of their own PPE must be completely voluntary.

It is important to note that the employer requirement to pay for PPE extends only to that PPE necessary to comply with OSHA standards and subject to the exceptions in the new rule. If an item is not PPE or not required by an OSHA standard, employer payment is not required. Also, it remains an employer obligation to ensure the adequacy of PPE when employees provide their own and make sure proper maintenance and sanitation of the PPE is done by employees. For example, an employer must ensure an employee's personal sunglasses used for eye protection at work meet the requirements of ANSI Z87.1 as required by OSHA's PPE regulations. Similarly, hard hats with sports team logos, which are commonly worn by workers, require employer verification that they meet the minimum requirements of ANSI Z89.1.

Allowances are a convenient and effective method of providing PPE to employees. An allowance system often takes into account the service life of particular items of PPE, sometimes setting out the exact service life in months or other time increment. Failing to take care of, misusing or losing PPE clearly shortens PPE's useful life. The benefit of an allowance system is that it provides incentives for employees to care for their PPE so they do not dip into their PPE allowance to pay for a new item before its service life expiration. OSHA does not prohibit allowance policies as long as they ensure an employee will receive replacement PPE at no cost to the employee (subject to the lost or abused PPE exception).

### **Conclusion**

Employer payment provisions for PPE must be implemented by May 15. The new rules may not have a significant effect on how roofing contractors provide required PPE to their workers, but the rules may provide stability and structure to common situations where workers lose or intentionally misuse PPE that a roofing contractor has provided. The added clarity of the new rules should be useful in implementing replacement procedures for PPE, disciplining workers for lost or misused PPE, and resolving potential disputes as to the nature of work clothing and voluntary use of some PPE.