

## OSHA NOW RULES EMPLOYERS MUST PAY COST OF EMPLOYEE SAFETY EQUIPMENT.

In 1999, OSHA issued a proposal to require employers to pay for all protective equipment, including personal protection equipment (PPE) with explicit exceptions for safety shoes, prescription safety eyewear, and logging boots but never adopted in final form until now. The rule takes effect in the next few months. According to OSHA the adoption of this rule will save more than \$200 million in costs and save some 21,000 fewer occupational injuries.

Employees often need to wear personal protective equipment (PPE), to be protected from injury, illness and death caused by exposure to workplace hazards. PPE includes many different types of protective equipment that an employee uses or wears, such as fall arrest systems, safety-toe shoes and protective gloves. Many of OSHA's standards require employers to provide PPE to their employees or to ensure the use of PPE. Some standards indicate in broad performance terms when PPE is to be used, and what is to be used. Other provisions are very specific such as respiratory protection for employees exposed to cadmium above a certain permissible exposure limit (PEL).

Some of OSHA standards specifically require the employer to pay for PPE while others are silent with regard to employer vs. employee payment. The regulatory text does not explicitly address the issue of payment for personal protective equipment. It merely states that PPE must be provided, used and maintained in a sanitary and reliable condition.

Although, OSHA proposed the PPE payment rule primarily to clarify employers' obligations under the standards, the Agency also believed that the revised rules would improve protection for employees who must wear PPE. While OSHA cited a number of reasons the underlying belief is employers are more knowledgeable about hazards existing in the workplace. Second, employer paid PPE would more likely reduce the risk of employees not using or misusing the equipment or clothing. Lastly, OSHA believes the employees would more likely cooperate with achieving full compliance if protective equipment was provided, thus the incidence of injuries and illnesses that are caused by non-use or misuse would be reduced.

Like many other standards there are exceptions to the rule. OSHA recognizes exceptions for certain safety-toe protective footwear and prescription safety eyewear. These items were listed as exceptions primarily because they are considered to be very personal in nature and were often worn off the jobsite.

OSHA has now passed the final rule, which goes into effect February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008. The final rule for construction standards are:

1. Except as provided by paragraphs 29 CFR1910.132 (H) (2) through (H) (6), the protective equipment, including personal protective equipment, used to comply shall be provided by the employer at no cost to employees.
2. The employer is not required to pay for non-specialty safety-toe footwear, (including steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.
3. 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 reimburse the employee for the shoes or boots.
4. The employer is not required to pay for:
  - Logging boots
  - Everyday clothing, such as long sleeve shirts, long pants, street shoes, normal work boots; or
  - Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, rubber boots, hats, raincoats, ordinary sunglasses and sunscreen.
5. The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.
6. Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b). The employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE.
- 7, This paragraph (h) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note: When the provisions of another OSHA standard specify whether the employer must pay for specific equipment, the payment provision of that standard shall prevail.