

TO: MEUW Members

FROM: Leo Diehl, Northwest Regional Safety Coordinator

DATE: January 24, 2008

RE: Update on New OSHA Rule that Employer Pays for Employee's Personal Protective Equipment (PPE) with few Exceptions; Will be Enforced by WI Department of Commerce Beginning May 15, 2008.

Here comes another rule/regulation change – are you aware of who is responsible for the payment of Personal Protective Equipment (PPE)? The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), in an effort to reduce work related injuries by insuring employees are protected by having and wearing proper PPE, has issued a new rule which is meant to clarify the often confusing and muddled topic of PPE and who must supply and pay for it. Under the rule, all PPE, with few exceptions, must be provided at NO cost to the employees.



The final rule becomes effective on February 13, 2008 and will be enforced by the Wisconsin Department of Commerce beginning May 15, 2008. Please see the attached OSHA Fact Sheet on the new rule. Click here for a link to the complete rule as it was published in the Federal Register on November 15, 2007:

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=20094

The Exceptions

The rule contains several exceptions to the employer payment requirement. Knowing this information may help you answer questions your employees may ask.

Safety-toe footwear, prescription eyewear

Under the final rule, 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 eyewear, provided that the employer permits such items to be worn off the job-site. However, if

the employer requires employees to keep this particular type of PPE at the work-place, the employer must pay for the item. Also, if this equipment is a non-standard “specialty item, the employer must pay for it. For example, prescription eyeglass inserts for full facepiece respirators, or non-skid shoes for floor strippers are specialty items, so employer payment will be required.

Metatarsal guards

The final rule clarifies that as long as the employer provides and pays for metatarsal guards that attach to shoes, they are not required to pay for shoes with integrated metatarsal protection.

Logging boots

The final rule makes clear that logging boots required by 1910.266(d)(1)(v) will continue to be excepted from the employer payment rule.

Everyday clothing and weather issues

Under the final rule, the employer is not required to pay for everyday clothing, such as long-sleeved shirts, street shoes, pants, and normal work boots. This exception applies even when the employer requires these items and the clothing provides protection from a work-place hazard. Similarly, the employer is not required to pay for ordinary clothing, skin creams, or other items, used solely for protection from weather.

However, 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.

Uniforms/sanitary clothing

The rule only requires payment for PPE. It does not require payment for uniforms, caps, or other clothing that are worn for purposes unrelated to safety and health (including rain suits).

Replacement PPE

The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

Employee-owned equipment

The rule acknowledges that employees may wish to use PPE they own, and if the employer allows them to do so, the employer will not need to reimburse employees for the PPE. However, employers cannot require employees to provide their own PPE or to pay for their own PPE.

Illustration Tables

Please see the two tables below which attempt to illustrate the differences between PPE that does not have to be paid for by the employer (Table 1) and PPE that should be paid for by the employer (Table 2). However, these tables are not an all inclusive/exhaustive list of PPE in each category.

Table 1: Examples of PPE & Other Items Exempted from Employer Payment Requirements.

- Non-specialty safety-toed protective footwear (e.g., steel-toe shoes / boots).
- Non-specialty prescription safety eyewear.
- Sunglasses/sunscreen.
- Sturdy work shoes / boots.
- Lineman's boots.
- Ordinary cold weather gear (coats, parkas, cold weather gloves, winter boots).
- Logging boots required under Sec. 1910.266(d)(1)(v).
- Ordinary rain gear.
- Back belts.
- Long sleeve shirts.
- Long pants.
- Dust mask/respirators used under the voluntary use provision in Sec. 1910.134.

Table 2: Examples of PPE for Which Employer Payment is Required.

- Metatarsal foot protection.
- Special boots for longshoremen working logs.
- Rubber boots with steel toes.
- Shoe covers—toe caps and metatarsal guards.
- Non-prescriptive eye protection.
- Prescription eyewear inserts/lenses for full face respirators.
- Prescription eyewear inserts/lenses for welding and diving helmets.
- Goggles.
- Face Shields.
- Laser safety goggles.
- Fire fighting PPE (helmet, gloves, boots, proximity suits, full gear).
- Hard hat.
- Hearing protection.
- Welding PPE.
- Items used in medical/laboratory settings to protect from exposure to infectious agents (e.g., aprons, lab coats, goggles, disposable gloves, shoe covers, etc...).
- Non-specialty gloves: payment is required if they are PPE, i.e. for protection from dermatitis, severe cuts/abrasions; however, payment is not required if they are only for keeping clean or for cold conditions (with no safety or health considerations).
- Rubber sleeves.
- Aluminized gloves.
- Chemical resistant gloves/aprons/clothing.
- Barrier creams (unless used solely for weather-related protection).
- Rubber insulating gloves.
- Mesh cut proof gloves, mesh or leather aprons.
- SCBA, atmosphere-supplying respirators (escape only).
- Respiratory protection.
- Fall protection.

Sources: Department of Labor – Occupational Safety and Health Administration (OSHA);
JJ Keller & Associates, Inc.

Attach.



Personal Protective Equipment (PPE) Payment Standard

- On November 14, 2007 the Occupational Safety and Health Administration (OSHA) announced a new rule clarifying the employer/employee responsibilities for payment of personal protective equipment (PPE).
- The final rule requires employers to pay for almost all personal protective equipment that is required by OSHA's general industry, construction, and maritime standards. Employers already pay for approximately 95% of these types of PPE.
- This action creates a clear and consistent policy across OSHA's standards, reducing confusion about the items for which employers are required to pay, and it reduces workplace injury, illness, and death - OSHA estimates that the rule will result in 21,000 fewer injuries per year.
- The final rule does not create new requirements regarding what PPE employers must provide. It does not require payment for uniforms, items worn to keep clean, or other items that are not PPE.
- The final rule contains exceptions for certain ordinary protective equipment, such as safety-toe footwear, prescription safety eyewear, everyday clothing and weather-related gear, and logging boots.
- The final rule also clarifies OSHA's intent regarding employee-owned PPE, and replacement PPE:
 - ✓ It provides that, if employees choose to use PPE they own, employers will not need to reimburse the employees for the PPE. The standard also makes clear that employers cannot require employees to provide their own PPE and the employee's use of PPE they already own must be completely voluntary. Even when an employee provides his or her own PPE, the employer must ensure that the equipment is adequate to protect the employee from hazards at the workplace.
 - ✓ It also requires that the employer pay for replacement PPE used to comply with OSHA standards. However, when an employee has lost or intentionally damaged PPE, the employer is not required to pay for its replacement.
- The rule provides an enforcement deadline of six months from the date of publication to allow employers time to change their existing PPE payment policies to comply with the final rule.