

Regulations Update

OH&ESD

#29 Employer Payment for Personal Protective Equipment

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OSHA Regulation:

29 CFR 1910.132 (h)

On November 15, 2007, the Occupational Safety and Health Administration (OSHA) issued a final rule for Employer Payment for Personal Protective Equipment (PPE). The standard was published in the *Federal Register*, 72 Fed. Reg. 64342, and specifies that the employer provide required PPE at no cost to the employee. The change applies to general industry, construction, shipyard, longshoring and marine terminal workplaces. OSHA PPE standards have required employers to provide (make available) PPE, but some of the provisions of those PPE standards have not required the employer to pay for the PPE. This final rule requires employers to pay for PPE provided by employers with exceptions to specific items.

This summary of the final rule on employer payment for personal protective equipment was prepared by 3M OH&ESD. It does not represent an official, legal nor complete summary or interpretation of the standard. If specific questions arise, the standard itself should be reviewed and relied on, rather than this summary. A copy of the "Pay for PPE" final rule can be viewed or copied from our website;

www.3M.com/occsafety
or from the OSHA website,
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=20094.

A. Summary

This final rule does not set forth new requirements regarding types of PPE that must be provided and the circumstances in which it must be provided. The rule does make clear when employers must pay for PPE that is used to comply with OSHA standards. The rule generally requires employers to pay for PPE, and sets forth specific exceptions where employers are not required to pay for such equipment. Under this rule, employers are required to pay for any item of PPE that is required by an OSHA standard, with a few narrow exceptions.

Employers are responsible for paying for the minimum level of PPE required by the standards. If an employer decides to use upgraded PPE to meet the requirements, the employer must pay for that PPE. If an employee asks to use different PPE than that provided by the employer at no cost, and the employer decides to allow it, then the employer is not required to pay for the item.

Employees may wish to use PPE they own, and if their employer allows them to do so, the employer does not need to reimburse the employees for the PPE. The employee's use of PPE they own must be completely voluntary.

This rule does not address respiratory protection or hearing protection because rules already require that this equipment be provided at no cost to the employee.

B. Specific Details

Dates

The final rule becomes effective February 13, 2008 and employers have until May 15, 2008 to be in compliance.

PPE for Which Employer Payment is Required

The employer must pay for all PPE that is required by OSHA standards with a few exceptions. Items that are not PPE or are not required by OSHA standards are not covered by this rule such as clothing worn:

- to identify a person as an employee
- to keep employees clean for purposes unrelated to safety or health

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- for product or consumer safety and health rather than employee safety and health (e.g., hair nets)
- ordinary hand tools even if they have “protective” characteristics such as being electrically insulated.

Employers do not have to pay for:

- Uniforms, caps, or other clothing worn solely to identify a person as an employee
- Steel-toe shoes or boots and ordinary prescription safety eyewear, provided the items can be worn off the job site
- Shoes or boots with built-in metatarsal protection, as long as the employer provides and pays for detachable metatarsal guards. If the employer requires that the employee wear metatarsal shoes or boots instead of metatarsal guards, the employer must pay for them
- Logging boots required by 1910.266(d)(1)(v)
- Everyday work clothing. This includes clothing worn for protective purposes, such as blue jeans or long sleeve shirts, as long as the item is not specifically required by an OSHA standard
- Flame-resistant clothing
- Ordinary clothing, skin creams, or other items used solely for protection from the weather, such as winter coats, gloves, raincoats, and ordinary sunglasses
- The replacement of any item that the employee has lost or intentionally damaged
- Respirators used under voluntary use provisions of 29 CFR 1910.134

Examples of items that must be paid for by the employer:

- Hard hats
- Work gloves, when they are required to protect employees from hazards such as lacerations, abrasions and chemicals
- Metatarsal guards, or metatarsal boots if the employer requires them instead of detachable metatarsal guards
- Non-specialty safety-toe protective footwear (steel-toe shoes or boots), but only if the employer does not allow the items to be worn offsite
- Specialty footwear, such as steel-toe rubber boots or shoes with non-slip soles
- Non-specialty prescription eyewear, but only if the employer does not allow the items to be worn offsite
- Specialty prescription eyewear, such as special-use prescription glasses that allow employees to wear respirators
- Special equipment or extraordinary clothing needed to protect employees from unusually severe weather conditions
- Respirators required to comply with OSHA standards (29 CFR 1910.134)
- Hearing protection (29 CFR 1910.95)

Prescription Eyewear Inserts In Respirators

If an employee’s prescription glasses cannot be fitted into the respirator without compromising the seal, special lenses/inserts will be needed to protect the employee, and they

must be provided at no cost to that employee. OSHA has determined that when special-use prescription lenses must be used or mounted inside the respirator facepiece, employers must pay for the lenses/inserts.

Welding Leathers, etc.

This category includes gloves, aprons and welding shields required for welding. OSHA has decided not to exempt welding equipment from the employer payment provisions of this standard. All of the equipment mentioned above is considered PPE.

However, employers may allow employees to bring PPE they already own to work, and are not required to reimburse the employee for that PPE. If a welder voluntarily brings his or her own PPE to the worksite, and the employer ensures that it is appropriate for the work to be performed, **then the employer is not required to provide the PPE at no cost to that employee.**

Replacement PPE

OSHA is requiring employers to not only pay for the initial issuance of PPE, but also its replacement, except when the employee has lost or intentionally damaged the PPE. This may include those instances where the PPE is broken during private use if the employer allowed the employee to take it home.

Replacement Schedules and Allowances

OSHA does not object to allowances as a means of paying for PPE, as long as the allowance policy assures that

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employees receive replacement PPE at no cost. Allowance systems must be based on the expected service life of the PPE. Employers may consider expected service life in an allowance system, as long as it ensures that replacement PPE is provided at no cost to employees.

In addition, these employers must have systems in place to deal with situations where PPE is damaged at work (e.g., accidents) or lasts for a period shorter than the expected service life due to workplace conditions other than loss or intentional damage.

The rule does not require that the employer provide and pay for replacement PPE whenever requested by an employee. If an employee requests replacement PPE, the employer should evaluate the PPE in question to determine if, in its present condition, the PPE provides the protection it was designed to provide.

Employees can be charged for replacement PPE when the PPE is lost or intentionally damaged by the employee. The employer can prohibit employees from taking employer-owned PPE away from the workplace and require it be kept at the workplace with the use of lockers or other storage mechanisms.

Employee-owned PPE

The standard allows an employee to use personally owned PPE provided it is adequate for the situation, the employer allows it, and the employer is not required to reimburse the employee for it. Where this occurs, the employer is responsible to assure that the PPE is adequate, is properly maintained, and cleaned.

Upgraded and Personalized PPE

In some workplaces, an employer may allow an employee to “upgrade” or personalize their PPE, and in doing so, not incur any extra cost for such equipment.

The provisions in the OSHA standard that address PPE owned by employees apply equally to upgraded or personalized PPE purchased by employees. When an employee owns a certain type of upgraded PPE and wishes to use it on the jobsite rather than using the PPE provided by the employer, the employer is not required to reimburse the employee for that PPE, pursuant to the employee-owned exception discussed above.

OSHA clarifies that an employer is not required to pay for upgraded or personalized PPE requested by an employee, as long as the employer provides adequate “basic” PPE to the employee. If an employee requests some specialized PPE in place of the PPE provided by the employer, the employer may allow the employee to acquire and use the PPE, but the employer is not required to pay for it.

If an employer uses an allowance system to provide and pay for PPE, the employer is only required to provide to the employee the amount of money required to purchase “basic” PPE that protects against hazards in the workplace. OSHA stresses that the employer is only responsible for the cost of the “basic” PPE.

Selection of PPE not required

OSHA is not requiring employers to provide a selection of PPE from which employees may choose beyond the existing requirements in the respirator and noise standards.

Industries and Employees Affected by the Standard

The final rule incorporates PPE payment provisions into the OSHA standards applicable to general industry (29 CFR part 1910), construction (29 CFR part 1926), shipyards (29 CFR part 1915), longshoring (29 CFR part 1917), and marine terminals (29 CFR part 1918). The amended text for these standards can be found in Annex A of this document.

Employees

The pay for PPE rule applies only to employees. If the worker does not meet the requirements to be classified as an employee, the employer does not need to pay for the PPE. For example, independent contractors are not covered by this standard.

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Acceptable Methods of Payment

Under the final rule, an employer may utilize any method of payment, as long as it results in PPE being provided at no cost to the employees.

OSHA has identified four methods that employers currently use to provide PPE at no cost to their employees:

1. Employer purchase and distribution,
2. Allowances,
3. Vouchers, and
4. Employer reimbursement to employees.

Employers may choose these options or develop other methods. OSHA believes, however, that PPE use and effectiveness improves when employers exercise control over the purchasing process.

Annex A. Amended Regulatory Text to OSHA PPE Regulations

Part 1910 — [Amended]

A new paragraph (h) is added to § 1910.132, to read as follows:

§ 1910.132 General requirements.

(h) *Payment for protective equipment.*

- (1) Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

- (2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and nonspecialty 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:

- (i) The logging boots required by 29 CFR 1910.266(d)(1)(v);
- (ii) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or
- (iii) 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.

- (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) of this section, 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, unless the PPE is excepted by paragraphs (h)(2) through (h)(5) of this section.

- (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 to § 1910.132(h): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Part 1915 — [Amended]

A new paragraph (f) is added to § 1915.152, to read as follows:

§ 1915.152 General requirements.

(f) *Payment for protective equipment.*

- (1) Except as provided by paragraphs (f)(2) through (f)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

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(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and nonspecialty 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:

(i) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(ii) 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.

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

(6) Where an employee provides appropriate protective equipment he or she owns, 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, unless the PPE is excepted by paragraphs (f)(2) through (f)(5) of this section.

(7) This paragraph (f) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1915.152(f): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Part 1917 — [Amended]

A new § 1917.96 is added, to read as follows:

§ 1917.96 Payment for protective equipment.

(a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

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

(c) 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.

(d) The employer is not required to pay for:

(1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(2) 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.

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

(f) Where an employee provides adequate protective equipment he or she owns, 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, unless the PPE is excepted by paragraphs (b) through (e) of this section.

(g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

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Note to § 1917.96: When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Part 1918 — [Amended]

A new § 1918.106 is added, to read as follows:

§ 1918.106 Payment for protective equipment.

- (a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.
- (b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and nonspecialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.
- (c) 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.
- (d) The employer is not required to pay for:
 - (1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes and normal work boots; or

- (2) 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.

- (e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.
- (f) Where an employee provides adequate protective equipment he or she owns, 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, unless the PPE is excepted by paragraphs (b) through (e).
- (g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1918.106: When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

Part 1926 — [Amended]

A new paragraph (d) is added to § 1926.95, to read as follows:

§ 1926.95 Criteria for personal protective equipment.

(d) *Payment for protective equipment.*

- (1) Except as provided by paragraphs (d)(2) through (d)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.
- (2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and nonspecialty 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:
 - (i) Everyday clothing, such as long-sleeve shirts, long pants, street shoes and normal work boots; or
 - (ii) 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.

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- (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) of this section, 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, unless the PPE is excepted by paragraphs (d)(2) through (d)(5) of this section.
- (7) This section shall become effective on February 13,

2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1926.95(d): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

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