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New OSHA Rule Requires Employers to Purchase Personal Protection Equipment for Employees

December 17, 2007

Eight years after the federal Occupational Safety and Health Administration (OSHA) issued a proposed rule that would require employers to purchase nearly all personal protective equipment (PPE) for employees, the regulatory agency has at long last clarified its requirements and issued a final rule.

After reading this article, you might wish they had pondered the issue for another eight years! The new rule is effective Feb. 13, 2008 and must be implemented by employers no later than May 15 next year.

OSHA standards require employees to wear personal protective equipment in order to protect themselves from injury, illness or death. Some of the standards are very specific regarding the PPE to be utilized (i.e., chain saw operators must wear protective leggings during specific operations, employees must wear respiratory protection when exposed to cadmium above certain limits, etc.), while other requirements are much more general.

However, there are very few OSHA standards that specifically require employers to purchase PPE, and most simply indicate that the equipment must be "provided." In 1999, OSHA issued a proposed rule, which would have established a uniform requirement that employers pay for *all* PPE required under any OSHA standard, with the exception of certain safety-toe shoes and boots, prescription safety glasses and logging boots. OSHA claimed that the proposed rule was supported by a correct interpretation of the statute, which places the burden of workplace safety on employers.

OSHA officials also asserted that requiring employers to pay for PPE would further the purpose of the Act by making work places safer. They also reasoned that safety would be enhanced because employers are more knowledgeable about hazards in the workplace and would be better able to select and maintain the correct equipment.

Additionally, OSHA indicated that by requiring employers to pay for PPE they would have more control of the equipment and its use and, as a result, the risk of misuse or non-use of PPE would be reduced. Finally, OSHA officials believed that requiring employers to purchase PPE would better ensure employee cooperation and compliance with safety standards.

OSHA relied on much the same analysis in adopting its final rule. Although it does not require that any new PPE be provided under OSHA standards, the final rule does require employers to pay for all protective equipment with these few exceptions:

- Non-specialty safety-toe protective footwear, including steel-toe shoes or steel-toe boots, and non-specialty prescription safety eye wear, provided that the employer permits such items to be worn off the job-site.

- 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.

- Logging boots required by 29 CFR 1910.266(d)(1)(v).

- Everyday clothing, such as long-sleeve shirts, long pants, street shoes and normal work boots.

- 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.

The rule further requires the employer to pay for the replacement of PPE, unless the employee has lost or intentionally damaged the equipment. Note that depending on the state in which the business is located, employers may not be able to deduct the cost of the replacement PPE from an employee's pay check. In Michigan , such a deduction would be allowed only if there is a proper voluntary written authorization by the employee.

Finally, when the employee provides his or her own proper PPE, the employer may allow the employee to use it. Under this circumstance, the employer is not required to reimburse the employee for that equipment.