



OSHA Issues Long-Awaited Final Rule On Personal Protective Equipment

Insights

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After an eight-year delay and seemingly endless controversy, the U.S. Occupational Safety and Health Administration (OSHA) released a Final Rule on November 14, clarifying when an employer must pay for employee Personal Protective Equipment (PPE). Assuming there are no further challenges, OSHA proposes to begin enforcement next May.

Between now and then, employers should review their policies and collective bargaining agreements to determine if they must begin to pay for additional employee safety equipment under certain circumstances.

Employers already pay for approximately 95% of the covered PPE, according to OSHA, and the Final Rule does not create any new requirements. It does clarify when employers must pay for the equipment, however, and you may find it necessary to at least modify your approach based on the detailed comments in the lengthy discussion accompanying the Final Rule.

The Rule's Main Provisions

1. The Rule does not require payment for uniforms, items worn to keep clean, or other items that do not meet the definition of PPE.
2. The Final Rule contains exceptions for certain ordinary protective equipment, such as safety-toe footwear, prescription safety eyewear, everyday clothing, weather-related gear, long-sleeve shirts, long pants, logging boots, and similar items which the employer may require, and which may even have protective value. The comments to the Final Rule address recurrent issues, such as gloves, personalized components which are necessary to utilize PPE, metatarsal shoes, and other items which under certain circumstances must be provided by employers. OSHA rejected excluding a vague category of items, loosely described as "tools of the trade" in construction, shipbuilding, etc.
3. When employees choose to use PPE they own, employers will not be required to reimburse the employees for the PPE. But the Standard emphasizes that employers cannot require employees to provide their own PPE. If employees use PPE they already own, the use must be completely voluntary.
4. Even when an employee provides his or her own PPE, you must ensure that the equipment is adequate to protect the employee from hazards in the workplace. As in the case of most OSHA

adequate to protect the employee from hazards in the workplace. As in the case of most OSHA standards, an employer may not shift its responsibility to others to ensure a safe workplace for its employees.

5. You may not require employees to pay for replacement PPE used to comply with OSHA standards. However, when an employee loses or intentionally damages PPE, the employer will not be required to pay for its replacement. Needless to say, an employer must ensure that employees possess and use adequate PPE. An employee's abuse or loss of PPE beyond the discussed circumstances of "normal wear and tear, occasional loss, or accidental damage" will not serve as a defense to a citation resulting from an employee's failure to use PPE. The Rule also provides that employers may discipline employees for loss or abuse of safety equipment as they would for any unsafe work behavior.

6. The Rule and accompanying comments discuss the effect of the Rule on collective bargaining relationships and admonish employers to remember the wage-hour implications of requiring employees to purchase work-related items, and related issues.

You may access the new standard, and 140 pages of comments which are intended to provide insight as to how employers may interpret the Rule by visiting OSHA's website at www.OSHA.gov and clicking the link "OSHA publishes employer payment for personal protective equipment final rule."

If you have questions, please direct them to the attorneys listed below, or your regular Fisher Phillips attorney.

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