



VOSH PROGRAM DIRECTIVE: 12-126

ISSUED: April 1, 2008

SUBJECT: Employer Payment for Personal Protective Equipment (PPE); Final Rule

A. Purpose.

This directive transmits to field personnel federal OSHA's clarification of policy concerning the PPE that employers must provide at no cost to employees, except in limited situations specified in the standard.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies to all VOSH personnel.

C. Reference.

72 FR 64341 (November 15, 2007).

D. Cancellation.

VOSH Program Directive 06-014 (August 15, 1995).

E. Action.

The Directors and Managers shall ensure that field personnel are apprised of and understand the standard included in this directive.

F. Effective Date.

June 1, 2008, with an implementation date of September 1, 2008

G. Expiration Date.

Not Applicable.

H. Background.

Some OSHA/VOSH standards specifically require the employer to pay for PPE, while most are silent with regard to whether the employer is obligated to pay. Health standards issued after 1978 have made it clear both in the regulatory text and in the preamble that the employer is responsible for providing necessary PPE at no cost to the employee (e.g., 29 CFR 1910.1018(j)(1), inorganic arsenic). The regulatory text and preamble discussion for some safety standards have also been clear that the employer must both provide and pay for PPE [e.g., 29 CFR 1910.266(d)(1)(iii) and (iv), the logging standard].

For most PPE provisions in OSHA/VOSH standards, however, the regulatory text does not explicitly address the issue of payment for personal protective equipment. The provisions that are silent on whether the employer must pay have been subject to varying interpretation and application by employers, federal OSHA, the federal Occupational Safety and Health Review Commission (Review Commission), and the courts.

On October 18, 1994, in a memorandum to its field staff, federal OSHA established a nationwide policy on the issue of payment for required PPE, “Employer Obligation to Pay for Personal Protective Equipment.” OSHA stated that for all PPE standards the employer must both provide, and pay for, the required PPE, except in limited situations. The memorandum stated that where PPE is very personal in nature and used by the employee off the job, such as is often the case with steel-toe safety shoes (but not metatarsal foot protection), the issue of payment may be left to labor-management negotiations. The Review Commission, however, declined to accept the interpretation embodied in the 1994 memorandum as it applied to 29 CFR 1910.132(a), Application of the General Requirements for PPE.

In 1997, the Review Commission vacated a citation issued to an employer for failing to pay for metatarsal foot protection and welding gloves. The Review Commission reasoned that the Secretary had failed to adequately explain the policy outlined in the 1994 memorandum in light of several earlier letters of interpretation from OSHA that it read as inconsistent with that policy.

On March 31, 1999, federal OSHA issued a proposed rule for employer payment of PPE and published this final rule on November 15, 2007.

The Virginia Safety and Health Codes Board adopted the final rule for Employer Payment for Personal Protective Equipment (PPE) for VOSH on February 28, 2008, with an effective date of June 1, 2008 and an implementation date of September 1, 2008.

I. Summary.

Many OSHA/VOSH health, safety, maritime, and construction standards require employers to provide their employees with protective equipment, including personal protective equipment (PPE), when such equipment is necessary to protect employees from job-related injuries, illnesses, and fatalities.

The provisions in standards that require PPE generally state that the employer is to provide such PPE. However, some of these provisions do not specify that the employer is to provide such PPE at no cost to the employee (See list of items covered in Appendix A). This standard does not require employers to pay for items that are not PPE, nor provide PPE where none has before been required. Instead, the

standard merely stipulates that the employer must pay for required PPE, except in the limited cases specified in the standard. (See Appendix B for examples of items exempted from employer payment requirements)

This final rule also clarifies federal and VOSH program intent regarding employee-owned PPE and replacement PPE. Employers must also pay for any replacement PPE, except in cases where the employee loses or intentionally damages his or her equipment.

The final rule also states that an employer is only required to pay for the PPE of its own employees, not independent contractors working in their [the employer's] facilities. "Host employers" and general contractors are not responsible for the payment of PPE for subcontractors employees. However, employers utilizing and controlling the work of workers from temporary help services are responsible for providing PPE at no cost to the worker, but are free to negotiate arrangements with the temporary worker agency.

C. Ray Davenport
Commissioner

Attachment: 72 FR 64341 (November 15, 2007) or refer to:

http://www.osha.gov/FedReg_osha_pdf/FED20071115.pdf

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Employer Payment for Personal Protective Equipment (PPE); Final Rule

As adopted by the
Safety and Health Codes Board

Date: February 28, 2008



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective date: June 1, 2008

Implementation date: September 1, 2008

- 16 VAC 25-90-1910.132, General requirements.
- 16 VAC 25-100-1915.152, General requirements.
- 16 VAC 25-120-1917.96, Payment for protective equipment.
- 16 VAC 25-130-1918.106, Payment for protective equipment.
- 16 VAC 25-175-1926.95, Criteria for personal protective equipment

When the regulations, as set forth in the final rule for Employer Payment for Personal Protective Equipment, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and
Industry

Agency

Department

February 13, 2008

June 1, 2008

May 15, 2008

September 1, 2008