

40 N.J.R. 4329(b)

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RULE ADOPTIONS

**LABOR AND WORKFORCE DEVELOPMENT
PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH**

40 N.J.R. 4329(b)

Adopted Amendment: N.J.A.C. 12:100-4.2

Safety and Health Standards for Public Employees

Employer Payment for Personal Protective Equipment

Adopted: June 18, 2008 by David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Filed: June 19, 2008 as R.2008 d.196.

Authority: N.J.S.A. 34:1-20, 34:1A-3(c) and 34:6A-25 et seq.

Effective Date: July 21, 2008.

Expiration Date: December 8, 2009.

Take notice that the Department of Labor and Workforce Development is adopting recent amendments to the Federal **Occupational Safety** and Health Administration (OSHA) regulations regarding employer payment for personal protective equipment (PPE). The amendments were adopted by the U.S. Secretary of Labor (the Secretary) and published in the Federal Register as a final rule on November 15, 2007. The first paragraph in the final rule contains the general requirement that employers must pay for the protective equipment, including PPE, that is used to comply with the amended OSHA standards (see 29 CFR 1910.132(h)(1), 1915.152(f)(1), 1917.96, 1918.106 and 1926(d)(1)). The provisions that follow the first paragraph modify this general requirement for employer payment and include the limited exceptions to the employer payment rule.

Adoption of the final rule is necessary in order to comply with N.J.S.A. 34:6A-30, which requires that the Commissioner of Labor and Workforce Development adopt all OSHA standards by reference upon adoption of those standards by the U.S. Secretary of Labor. The statutory requirement ensures that the State's **Public Employees Occupational Safety** and Health (PEOSH) program is at least as

effective as OSHA, thereby making the State program eligible for Federal approval and funding under the 1970 Federal **Occupational Safety** and Health Act.

N.J.S.A. 34:6A-30 provides that the adoption of Federal standards are not subject to the formal rulemaking requirements of N.J.S.A. 52:14B-4, but shall be duly adopted upon publication in the New Jersey Register. As a result, the Department has not held a **public** hearing, nor has it requested formal written comments on its adoption of the amended Federal standards.

Federal Standards Statement

The adopted amendments do not contain any standards or requirements, which exceed standards or requirements imposed by Federal law. The amendments fulfill the State Legislature's mandate that the Department of Labor and Workforce Development adopt OSHA standards for its PEOSH program.

Full text of the adopted amendments follows:

General Industry

PART 1910--[AMENDED]

■ 1. The authority citation for subpart I of 29 CFR part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the **Occupational Safety** and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12--71 (36 FR 8754), **8--76** (41 FR 25059), 9--83 (48 FR 35736), **1--90** (55 FR 9033), **6--96** (62 FR 111), **3--2000** (65 FR 50017), **5--2002** (67 FR 65008), or 5--2007 (72 FR 31160), as applicable, and 29 CFR Part 1911.

■ 2. 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 non--specialty 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]

■ 1. The authority citation for 29 CFR part 1915 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections. 4, 6, and 8 of the **Occupational Safety** and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12--71 (36 FR 8754), **8--76** (41 FR 25059), 9--83 (48 FR 35736), **1--90** (55 FR 9033), **6--96** (62 FR 111), **3--2000** (65 FR 50017), **5--2002** (67 FR 65008), or 5--2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. 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.

(2) 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 **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.

Longshoring

PART 1917--[AMENDED]

■ 1. The authority citation for 29 CFR part 1917 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the **Occupational Safety** and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12--71 (36 FR 8754), **8--76** (41 FR 25059), 9--83 (48 FR 35736), **1--90** (55 FR 9033), **6--96** (62 FR 111), **3--2000** (65 FR 50017), **5--2002** (67 FR 65008), or 5--2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. 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 non--specialty 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.

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.

Marine Terminals

PART 1918--[AMENDED]

■ 1. The authority citation for 29 CFR part 1918 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections. 4, 6, and 8 of the **Occupational Safety** and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12--71 (36 FR 8754), **8--76** (41 FR 25059), 9--83 (48 FR 35736), **1--90** (55 FR 9033), **6--96** (62 FR 111), **3--2000** (65 FR 50017), **5--2002** (67 FR 65008), or 5--2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. 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 non-specialty 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.

Construction

PART 1926--[AMENDED]

■ 1. The authority citation for subpart E of 29 CFR part 1926 is revised to read as follows:

Authority: Section. 107, Contract Work Hours and **Safety** Standards Act (Construction **Safety** Act) (40 U.S.C. 333); Sections. 4, 6, and 8 of the **Occupational Safety** and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12--71 (36 FR 8754), **8--76** (41 FR 25059), 9--83 (48 FR 35736), **1--90** (55 FR 9033), **6--96** (62 FR 111), **5--2002** (67 FR 65008), or 5--2007 (72 FR 31160) as applicable; and 29 CFR Part 1911.

■ 2. 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 non--specialty 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 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.