

CLIENT ALERT

November, 2007

LABOR & EMPLOYMENT DEPARTMENT

Paul R. Lewis, Chair
Jo Bennett

H. Richard Brooks

R. Michael Carr

Susan R. Friedman

Charles F. Harenza

E. Thomas Henefer

Joseph P. Hofmann

Harry A. Horwitz

Kenneth D. Kleinman

James B. Longacre

Gary D. Melchionni

Bradley L. Mitchell

William J. Payne

Larry J. Rappoport

Joseph D. Shelby

Frank C. Sabatino

Michael G. Tierce

Kirk L. Wolgemuth

Jeffrey M. Zimskind

Lisa M. Scidurlo

John F. Ward

Theresa M. Zechman

Charles C. Scheim

Edward C. Renenger

Robert L. Jensen

Adam M. Zuidema

Edward H. Feege

John S. Hayes

OSHA PUBLISHES FINAL RULE REQUIRING EMPLOYERS TO PAY FOR PERSONAL PROTECTIVE EQUIPMENT

On November 15, 2007, the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") published a final rule that requires employers to pay for most employee personal protective equipment ("PPE"). The rule becomes effective on February 13, 2008. The rule provides an enforcement deadline of six months from date of publication to allow employers time to bring their PPE payment policies into compliance. Employers must therefore implement the PPE payment requirements no later than May 15, 2008.

According to OSHA, the rule is intended to clarify who is responsible for paying for PPE and is anticipated to have substantial safety benefits that will significantly reduce the number of occupational injuries that occur each year. The rule does not create any new requirements for providing PPE. Instead, it provides that, subject to certain limited exceptions, employers must pay for PPE required under existing standards. The rule applies to OSHA standards in general industry and the shipyard, marine terminal, long shoring and construction industries.

Rationale for the Rule

In the preamble to the proposed rule, OSHA articulated three reasons underlying its belief that requiring employers to pay for PPE would improve safety and health protection for employees who must wear PPE:

- Employers are more knowledgeable about hazards existing in the workplace, and are therefore in the best position to identify and select the correct equipment and maintain it properly.
- Requiring employer payment for PPE will reduce the risk of employees not using or misusing PPE by ensuring that employers maintain central control over the selection, issuance, and use of PPE.
- Employees will be more likely to cooperate in achieving full compliance with existing standards if protective equipment is provided at no charge.

In OSHA's opinion, these considerations together will serve to increase the use and effectiveness of PPE, thereby reducing the incidence of injuries and illnesses that are caused by non-use or misuse of PPE.

Exceptions to the Rule

The rule provides that the employer is not required to pay for the following types of PPE:

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

STEVENS & LEE

Understanding Your Business Is Our Business

800.510.0274

www.stevenslee.com

The rule also includes the following conditional exceptions:

- The employer is not required to pay for ordinary safety-toe protective footwear, including steel-toe shoes or steel-toe boots, and ordinary prescription safety eyewear, provided that the employer permits such items to be worn off the job site.
- If the employer provides metatarsal guards but allows the employee, upon 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.
- The employer is not required to pay for replacement PPE if the need for replacement is caused by the employee's loss or intentional damaging of the original PPE.
- If the employee provides adequate PPE that he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment.

Conclusion and Recommendations

While there is still enough time left to review and revise your PPE payment policies to comply with the mandates of the final rule, now is the time to take action. We believe that this new rule does not add to existing employer obligations and, indeed, may provide clarity in situations where employers previously thought payment was required. If you have any questions or would like to schedule a consultation to discuss your company's implementation of the PPE rule, please contact one of the members of the Labor and Employment Group listed below or the Stevens & Lee attorney with whom you regularly speak.

Kenneth D. Kleinman
215-751-1946
kdk@stevenslee.com

John F. Ward
610-205-6044
jfw@stevenslee.com

Labor & Employment Department

With one of the broadest, deepest and most successful management-side practices in the region, our labor and employment lawyers actively manage hundreds of cases for large corporations and smaller closely held businesses in the private sector, and health care organizations in the not-for-profit sector. We assist our clients in a complete range of matters involving both traditional, union-oriented labor law and the employment law arena.

For more information on our practice, visit us at www.stevenslee.com.