

NORTH CAROLINA DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
RALEIGH, NORTH CAROLINA

Chapter 7

CFR Revision 128B

Subchapter 7F
NC-OSH

Field Information System Part I
Personal Protective Equipment
General Industry
OSHNC Specific Amendments

DISCUSSION: The question of who is responsible for paying for personal protective equipment - the employer or the employee - has been a frequently presented to OSHNC. This matter was previously addressed in OPN 85 - "Interpretation of Personal Protective Equipment standards." However, OSHNC believed that this standard would be much more clear to employers and employees with the addition of a clarifying amendment.

Pursuant to a 1990 federal OSHA internal memo, OSHNC chose to amend 29 CFR 1910.132, *General requirements*. The memo stated that it was the position of federal OSHA that employers were obligated to pay for PPE not worn off the jobsite. Federal OSHA based that interpretation on a 3rd Circuit Court case, The Budd Co. v. OSHRC, 513 F.2d 201 (1975). Further, since it has always been the employer's responsibility to provide a safe and healthful workplace, and PPE is part of that workplace, then it logically follows that the employer should also provide and pay for PPE. OSHNC incorporated this interpretation into the current General Industry PPE standard.

OSHNC maintains that there are some items which are personal in nature (i.e. prescription safety glasses) and those which can be used either at home or at a second job which are not required to be purchased by the employer. The matter of payment for these items may be left to labor-management negotiations.

On October 20, 1994, federal OSHA issued a news release and a compliance memorandum that clarified their interpretation of the standard and mirrored OSHNC's intent of the amendment. The memorandum included specific references to PPE which fall under the employer's payment obligation. These include "welding gloves, wire mesh gloves, respirators, hard hats, specialty glasses and goggles (such as those designed for laser or ultraviolet radiation protection), specialty foot protection (such as metatarsal shoes and linemen's shoes with built-in gaffs), face shields and rubber

gloves, blankets, cover-ups, hot sticks and other live-line tools used by power generation workers." The memorandum also cited examples of PPE that are personal in nature which include "specialty safety glasses (prescription), safety shoes and cold-weather outer wear. . . unless the shoes or outer wear is subject to contamination by carcinogens or other toxic or hazardous substances and cannot be safely worn off-site...." OSHNC adopts these examples.

Failure of the employer to provide, at no cost, PPE which is not personal and not used away from the job is a violation of the amended OSHNC standard and must be cited.

As an exception, there are work situations in which it is customary for workers in a particular trade to provide their own PPE. The standard at 1910.132(b)(2) acknowledges that employees may provide their own equipment, however, it remains the employer's obligation to assure that any such piece of equipment is adequate and that it is properly maintained.

ACTION:

This amendment separates 1910.132(b) into two subparts: (b)(1) *Employer- provided equipment* (the amendment) and (b)(2) *Employee-owned equipment* (the current language).

This final rule at 29 CFR 1910.132, Subpart I, was adopted in North Carolina with an effective date of November 1, 1994. A copy of the regulatory text from the **North Carolina Administrative Code at 13 NCAC 07F.0101** is attached.

Please file this NC CFR Revision in Part I of your Field Information System and remove OPN 85.

Date: 10/26/1994

Charles N. Jeffress, Director
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(Signed on Original)

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