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By Peter Gerstenberger



OSHA **Rolls Out Employer-Paid PPE Rule**

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) recently announced a final rule on employer-paid personal protective equipment (PPE). Under the rule, all PPE, with a few exceptions, will be provided at no cost to the employee.

The rule, first proposed in 1999, was published in the Federal Register November 15, 2007.

OSHA anticipates that this rule will have substantial safety benefits that will result in more than 21,000 fewer occupational injuries per year. "Employees exposed to safety and health hazards may need to wear personal protective equipment to be protected from injury, illness and death caused by exposure to those hazards," says Assistant Secretary of Labor for OSHA Ed Foulke. "This final

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rule will clarify who is responsible for paying for PPE, which OSHA anticipates will lead to greater compliance."

The provisions in OSHA 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. In this rulemaking, OSHA is requiring employers to pay for the PPE provided, with exceptions for specific items.

The rule does not require employers to provide PPE where none has been required before. Instead, the rule merely stipulates that the employer must pay for required PPE, except in the limited cases specified in the standard.

Tree care employers should not be lured into thinking that they can circumvent PPE use even when they feel employees work safely without it. The OSHA field compliance officer inspecting the tree crew is the one to ultimately determine whether there are hazards present that PPE could reduce or eliminate. Typically the hazards encountered in a tree pruning or removal operation are considered potentially life-threatening and accordingly the failure to protect against these hazards is by definition a "serious" violation.

A single PPE infraction has historically led to a two-part citation: employer failure to assess the hazards, and employer failure to provide PPE. With this new rule in place, it is anticipated that a third item will be added and an additional fine levied in the typical citation. In other words, the cost of non-compliance just went up 50 percent.

There is a victory in the name of reasonableness for the tree care employer. The final PPE rule contains a few exceptions for ordinary safety-toed footwear, ordinary prescription safety eyewear, logging boots and ordinary clothing and weather-related gear. Over the years, as this rule was being shaped, the Tree Care Industry Association submitted comments and even testified at OSHA hearings. One of the tenets of our comments was that the employer should not be obligated to pay for items that, while protective in nature, were essentially employee's personal items of clothing. Obviously, the message was heard.

The rule provides an enforcement deadline of May 15, 2008, six months from the rule's promulgation, to allow employers time to change their existing PPE payment policies.

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