

**Comments
to the Occupational Safety and Health Administration
Proposed Rule: Employer Payment for Personal Protective Equipment
Docket S-042**

ISEA – The Safety Equipment Association strongly supports OSHA's proposed rule clarifying that employers must pay for the personal protective equipment (PPE) required by OSHA to protect the health and safety of their employees.

By its very nature, personal protective equipment is the first line of defense for millions of people who work in the presence of hazards which can cause illness, injury and death. Employers who provide *and pay* for PPE demonstrate their commitment to worker safety because such a systematic PPE program, driven by management through the organization, is an important factor in creating a positive safety culture. These employers recognize that they are not simply incurring a cost for equipment, but rather making an investment by valuing their employees and avoiding the high direct and indirect costs of injury, illness and death.

ISEA believes that it is the responsibility of employers to properly protect their employees from all hazards in the workplace. Employers are already required in OSHA's PPE standards to conduct hazard analyses to determine what PPE is necessary to protect their employees. When employers pay for PPE, ISEA believes that workplaces are safer because:

1. The proper PPE to protect against the particular hazard(s) in the workplace is more likely to be selected.

Personal protective equipment is technically sophisticated, designed, built and tested to exacting standards of performance. The equipment must be properly selected and fitted, and workers must be properly trained in its use, application and maintenance. Its selection demands professional skill, knowledge of the workplace and understanding of the potential hazards.

A company's designated safety person(s), safety consultant, loss control agent or other person who understands the nature of the workplace hazards and what equipment is necessary to guard against them is in the best position to choose the proper PPE.

ISEA – The Safety Equipment Association is the national association for manufacturers of safety and personal protective equipment. Established in 1933, the ISEA supports its members in manufacturing and marketing the highest quality products dedicated to protecting the safety and health of people exposed to hazardous and potentially harmful environments.

The association's 80 member companies manufacture safety equipment in the following categories: emergency eyewash and showers, eye and face protection, fall protection, first aid, hand protection, head protection, hearing protection, industrial warning devices, atmosphere monitoring instruments, respiratory protection, and safety wearing apparel. ISEA does not represent manufacturers of safety footwear.

Selecting the proper equipment demands professional skill and is not as simple as purchasing a light bulb or other commodity item. However, it is fundamental human nature that many employees who have to purchase their own equipment are more likely to use lowest price as their sole selection criteria instead of also factoring in fit, function, and fashion that provide for optimum protection and make the equipment desirable to use.

An example of a common PPE selection problem is when a respirator designed for blocking particulates is unknowingly used for protection against paint vapors. To an untrained PPE selector, an air-purifying particulate respirator, which provides no protection from inhaling paint vapors, can look identical to one that does protect against vapors. When the employer makes PPE buying decisions, the likelihood increases that the right PPE will be used.

2. The PPE is more likely to be available and in good condition.

When employers pay for PPE, there is no question about whether the necessary PPE will be available for all persons exposed to hazards at a worksite. Reordering PPE supplies such as respirator cartridges is more automatic if there is some degree of equipment uniformity at a worksite. Employers are more likely to replace PPE when it is worn or damaged than are employees who might try to save money by using equipment beyond its useful life. Additionally, maintenance and repair of equipment is easier and more likely to be done properly if there is some degree of uniformity of equipment at a workplace.

3. Employees are more likely to be properly trained in using the PPE at the worksite.

Although OSHA does not list this issue as a benefit of employers paying for PPE, ISEA believes that training employees on the use, and proper care, maintenance, useful life, limitations and disposal of PPE is simpler and more effective if there is some degree of equipment uniformity at a worksite.

Comments on Issues Raised by OSHA in the Proposed Rule (64 FR 15415-6, March 31, 1999)

Issue 1. Alternative Regulatory Text

The regulatory text as drafted in the proposed rule is cleaner than the alternative which contains the phrases "personal in nature" and "customarily used off the job."

Besides being difficult to define and interpret, granting exceptions for employer payment when the PPE is "personal in nature" is oxymoronic. PPE stands for *personal* protective equipment. To be effective against hazards in the workplace, the equipment must properly fit the unique size, shape and condition (i.e. degree of visual acuity) of the user's body; in other words, be "personal in nature."

Similarly, there may be numerous types of personal protective products that are provided by the employer, used by only one worker, properly sized and fitted, and used off the job. Examples include hard hats, plano safety glasses, back belts, gloves, protective clothing and rainwear, PVC boots, and some respirators.

Issue 2. OSHA Should Reconsider the Proposed Exception For Prescription Safety Eyewear

One of the daily challenges facing safety professionals is overcoming the workplace mentality that "because I have my streetwear prescription glasses on, I am protected from eye injury." If workers who need prescription glasses will wear prescription safety glasses appropriate to the job, more workers will be protected, and the additional nominal costs to employers for providing this protective equipment will be recovered many times over by cost savings from injuries prevented.

PPE manufacturers are acutely aware that comfort and ease of use are significant motivators of PPE use. OSHA reasons that "regular prescription glasses can be worn underneath goggles and other protective eyewear that has been designed to accommodate them." 64 FR 15415 In practice, expecting a worker to wear a protective goggle or "over-the-glasses plano" over regular prescription eyewear for any length of time discriminates against workers with less than perfect vision, when the worker could be protected by wearing prescription safety glasses. This dual layer is also a less perfect optical solution than prescription safety glasses.

The difficulty is compounded when the worker has to wear a face shield. For impact protection, safety glasses should always be worn under a face shield. It would be cumbersome to don planos over prescription eyewear and wear a face shield.

Other reasons why ISEA believes that employers should pay for prescription safety eyewear are:

- An employee who is required to purchase prescription safety eyewear at a retail location will probably pay considerably more than one who buys through the employer's wholesale channel.
- It may be harder for the company to determine compliance of lens, frame and sideshield with ANSI or other appropriate standards if the glasses are purchased from sources outside the company.
- Sideshields are an essential part of the protection offered by safety glasses. It is not clear that all opticians, optometrists and other optical dispensers are familiar enough with safety eyewear to ensure properly fitted sideshields.
- Safety glasses with permanent sideshields would have limited benefit to the employee outside of the workplace. Most people would not wear glasses with permanent sideshields for personal use, except when safety is a concern.
- OSHA justifies its exception for prescription safety eyewear by pointing out that these safety glasses can be used outside the workplace. From ISEA's viewpoint,

however, responsible employers want their employees to use their safety glasses at home when appropriate. Some employers even encourage their workers to use their plano safety glasses off the job when doing hazardous work. An employee who is injured at home or elsewhere is just as disabled as one who is injured at the workplace.

Protecting workers who have visual impairments is simply a cost of doing business in order for the worker to use the skills in the job for which he or she was hired. Many companies offer vision care benefits because they recognize that not being able to see properly on the job can create a hazardous condition.

The exception for employer payment of prescription safety glasses discriminates against older workers and those who have less than perfect vision, and should be removed from the proposed regulation.

Issue 3. Employee Turnover Rate in the Construction Industry

While ISEA sympathizes with construction employers who must provide PPE to more employees because of frequent turnover, it is still the employer's responsibility to ensure that employees are properly protected. One possible way to handle employer payment of prescription eyewear that is fair to both parties is to charge the employee or withhold from the last paycheck some prorated share of the glasses if the employee has not worked for the employer for a certain reasonable length of time.

The rationale behind this suggestion is that in three months (or other suitable timeframe), the employer has presumably benefited from the employee who could see well and was properly protected. If employees take the glasses from job to job, construction employers would have to buy less prescription safety glasses because new hires would already bring them to the job. If an employee's prescription changes, then that would be considered a reason for employers to pay for new glasses and the prorated employee reimbursement concept would begin again.

Issue 7. Employee Use of More Costly PPE Because of Personal Preference

PPE must be selected to protect against hazards identified in the workplace, and properly fitted to the employee. It is the employer's responsibility to provide PPE that meets these criteria. If the employee wants to wear more costly PPE than the employer provides because of additional features, style preference, etc., then it would be fair for the employee to pay the difference. The bottom line is that the employer must ensure that the worker has adequate protection to work safely and effectively.

Issue 8. "Insert Type" Prescription Glasses Inside Full-Facepiece Respirators

In ISEA's opinion, full-facepiece respirator inserts are not different from or more special than prescription safety eyewear. Both should be supplied and paid for by the employer. Some prorated share of the cost could be borne by the employee as suggested in number 3 above if the employee does not stay on the job for some predetermined period of time. A full-facepiece respirator insert costs roughly \$50 - \$100, depending on the prescription (single, bifocal, etc.), the material (polycarbonate, etc.), and the fitting-delivery system used.

Issue 10. Employer Payment of Uniquely Personalized Components of PPE

ISEA believes that employers have an obligation to properly protect employees from all occupational hazards. If uniquely personalized components of PPE are protective in nature—such as winter liners for hardhats—then employers should pay for them.

Employers should pay for custom prescription lens inserts used under a welding helmet because safety glasses should be worn when welding. It is not functional to wear street prescription glasses, a protective goggle and a welding helmet. All equipment necessary for employees to adequately perform their jobs should be paid for by the employer.

Issue 11. Employer Payment for Replacement of PPE

It is important that any item of PPE be replaced immediately when an inspection reveals that it is damaged or no longer meets its intended use. Manufacturers provide guidelines to assist in making this determination. Employers should pay for these replacements under the same terms as they provide initial issue of PPE.

Some companies provide an annual PPE benefit to employees based on expected use of PPE under normal conditions. If this amount is exceeded, employees would have to pay for replacement only if it is their fault for it being lost or damaged. The employer can, of course, pay more than this annual amount when circumstances warrant. Such a system would eliminate abuse of the program.

With regards to prescription safety eyewear, ISEA believes that employers should pay for it and replace it when it is worn out (over one to two years) or when the employee has a new prescription. A prorated payment system like that described in number 3 above would be appropriate in cases where an employee did not stay on the job for a predetermined period of time.