

Who Pays for Protection?

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For almost eight years, unions have been waiting for the *Labor Department* to finish writing rules that would make it clear that employers are supposed to pick up the tab for safety equipment for millions of workers.

Many companies already foot the bill for goggles, hard hats, ear plugs, mesh gloves, safety harnesses and other gear that they have been required to provide since 1994. But some industry sectors, including home building, poultry processing and construction, say a mandate requiring them to pay would be too open-ended.

Labor officials say the complicated nature of the issue, both legal and practical, has caused the delay. The unions claim the Bush administration has stalled because it is looking out for corporate interests.

So on Jan. 3, the *AFL-CIO* and the United Food and Commercial Workers Union filed suit in the *U.S. Court of Appeals* in the District to force the government to complete the long-postponed proposal.

"This is an uncomplicated rulemaking on a straightforward, but significant, issue of importance to worker safety and health," the suit says. It asks that the *Occupational Safety and Health Administration* be directed to complete the regulation within two months of a court order.

The personal protective equipment industry includes manufacturers such as *3M* and *DuPont*. It has sales of about \$10 billion annually, according to the *International Safety Equipment Association* in Arlington. The government estimates the rule would cost businesses about \$62 million a year.

The dispute has a long history. After the initial protective equipment rule was issued in 1994, it said employers had to provide various pieces of safety gear. But unlike a series of health-related OSHA standards, it didn't say who should foot the bill, and not every company did.

***Northrop Grumman's Newport News Shipbuilding* in Newport News, Va., for example, provides and pays for protective equipment for its 19,000 employees.**

"We like consistency," said James Thornton, director of environmental health and safety for the shipyard, which builds and maintains aircraft carriers and submarines. "We prefer that we purchase them, provide them and train employees on the equipment."

The unions believe that lower-paid workers in industries such as poultry processing do not get the same deal.

There is a great deal of debate by some companies over such issues as what items are considered "tools of the trade" and are expected to be owned and paid for by employees, how replacement equipment is covered, what labor agreements might stipulate and whether the rule should cover temporary workers.

"It's the low-wage worker in forgotten industries" who is most affected, said Jacqueline Nowell, director of the occupational, safety and health office for the United Food and Commercial Workers Union.

Nowell said unions have been trying to force completion of the rule since it was proposed in 1999 because these workers sometimes have to pay at least part of the bill for items like wire-mesh gloves, which are used to protect their hands from being cut while processing chickens.

She said workers often go without protection if a glove is lost or stolen, or worn out equipment is used because they are uneasy about asking for a replacement.

OSHA said that spelling out that businesses must pay the bill would prevent an estimated seven deaths and 47,000 injuries a year among the 20 million covered workers. Mishaps still occur because of the use of worn-out or defective equipment, the agency said.

Richard L. Lobb, spokesman for the *National Chicken Council* in the District, said industry policy is to pay for the original set of protective equipment. When an item wears out, the employee must turn it in to receive a new one. In cases where equipment disappears, Lobb said, employees might be charged for a replacement.

"Obviously, this gives the employee the incentive to take care of equipment and not lose it or wear it out by using it outside the plant,"

he said. Employees who cannot afford items like wire-mesh gloves, which can cost up to \$65, can have the cost deducted from their paychecks, he said.

Over the years, OSHA has issued various interpretations of the protective equipment rule, saying employers had to pay for the gear, too, except for safety shoes, prescription eyewear and logging boots.

The agency lost a key administrative challenge by *Union Tank Car* of Chicago in 1997. The ruling said OSHA could not make the company pay for welding gloves and special equipment to prevent workers' feet from being crushed.

This led the agency in 1999 to issue the proposal stating explicitly that employers are the financially responsible party.

The unions' recent complaint calls the agency's inability to issue a final rule "an egregious instance of unreasonable delay." OSHA has missed seven of its own deadlines for finishing the rule, despite pressure from congressional appropriators and Hispanic members of Congress to finish the job.

Labor Department officials said in an interview that the issue is complicated and that it is not uncommon for rulemakings to take longer than expected. The scheduled date for a final rule now is May.

"This is not simple," said Bryan Little, deputy assistant secretary for occupational safety and health. "Safety standards aren't always slam-dunks. It's incumbent on us to carefully review the record and come up with the best standard."

OSHA has issued 18,000 citations on the equipment rule since 1999, with violations such as not providing the equipment or not keeping items clean. Cost has not been an issue.

The agency's 2004 response to a query about the issue of who pays may explain why businesses and workers are confused about the rule. It said, in part: ". . . at the present time, OSHA does not view this section as imposing an enforceable obligation on employers to pay for personal protective equipment. Therefore, employees must be afforded the protection of personal protective equipment, regardless of who pays."