

INSIGHT



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Up close and personal with PPE

Identifying appropriate Personal Protective Equipment (PPE) for a job can be a tricky task, often compounded by having to convince reluctant staff to wear and properly use the safety gear. This article considers employers' and employees' PPE obligations in terms of the Health & Safety in Employment Act 1992 ('the Act') and discusses overcoming such resistance.

Duties

The starting point is to look at the duties employers and employees have under the Act. Each has responsibilities, but the buck stops with the employer, who has an overriding duty to provide workers with adequate PPE and ensure it is properly used. Employers cannot shift that responsibility to the employee by, for example, paying workers an allowance to buy their own PPE.

The Courts give employees a fair bit of latitude in this area so, when considering PPE, employers must anticipate that employees may act irrationally, unwittingly or unthinkingly. Although employees must take all practicable steps to ensure their own safety, for various reasons—for example, stress, lethargy, complacency, desire to increase productivity, drugs or inattention—employees will sometimes act unsafely and not in accordance with their training.

If such behaviour has happened before and is known, or ought to be known by the employer to occur, then there is an even stricter onus on the employer to protect employees from themselves. For example, an employee that is required to carry out a quick and routine task, such as a brief welding job, may try and save time by carrying out the work without first donning the full, appropriate attire (facemask, goggles, apron, overalls, steel-capped boots, etc). If no one identifies or raises the lack of PPE with that employee, perhaps due to lack of supervision or a failure to undertake safety/PPE audits, the practice may be repeated and become more widespread.

One common reason for noncompliance is employees thoughtlessly taking short-cuts. Employers therefore have a duty to anticipate that and remove the temptation, if possible. In the example used above, one practicable step might be for welding equipment to have to be 'signed out' by a supervisor along with the required PPE. What is practicable wholly depends on the circumstances of the individual case, and the size and nature of the company.

Employers are judged upon what is known immediately before or at the time of the accident, not in hindsight. The Act requires 'all practicable steps' that the employer knows about, or ought reasonably to know about, depending on the knowledge, technology available and best practice in the industry. But, best practice should not be confused with common industry practice. The argument that 'everyone does it this way' is not a defence.

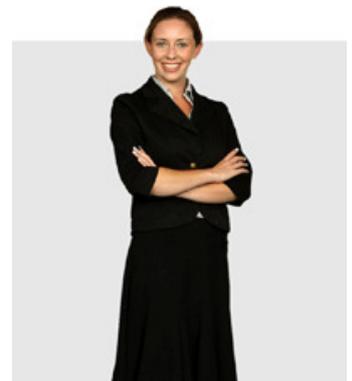
There are a few cases that have absolved an employer from liability. Typically they involve situations where an employee has flagrantly disobeyed direct, written and explicit instructions. However, successful defence of prosecutions under the Act are rare. Where employees are injured, partly as a result of their own irrational conduct or misbehaviour, it will still commonly result in a conviction for the employer.

Preventing hazards

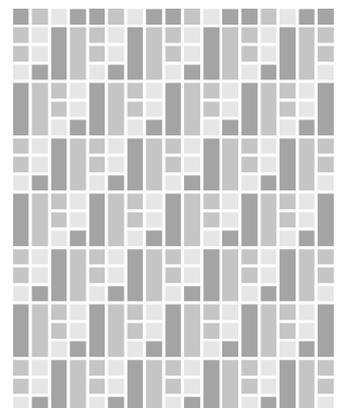
The job of minimising, isolating and eliminating hazards is challenging; particularly because sometimes eliminating one hazard with PPE may give rise to a new hazard. In one case, workers refused to wear protective goggles in an orchard, due to reduced visibility from misting and fogging. The company is now trialling mesh goggles and other types of eye protection. Another example concerns earmuffs. They may safeguard hearing but can dull awareness of surroundings, possibly posing a risk from vehicles, machinery and the like.



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Courts have acknowledged that absolute protection against all hazards is a difficult and often impossible feat. In one case, employees operating a furnace were equipped with cotton overalls that were not flame-retardant. They received serious burn injuries after an explosion from the furnace. The District Court found the employer guilty of breaching the Act, noting there were flame-retardant overalls on the market that could have prevented the burns.

On appeal to the High Court, it was noted that there were no overalls meeting New Zealand Safety Standards on the market at the time and that, while using flame-retardant overalls would have eliminated the flammability hazard, they, in fact, increased the employee's risk of injury from steam burns.

The Court looked at the employer's comprehensive safety system; the fact that the employer had taken advice from the DoL (which had not identified flame-retardant overalls) and the employer keeping up with developments in the market and pro-actively trialling new PPE. All this, combined with the hazards posed by flame-retardant overalls, meant the company had not breached the Act.

Ensuring compliance and encouraging staff to wear PPE

1. Familiarise yourself with the PPE's specifications and/or operating instructions.
2. Check current DoL website guidelines for your industry.
3. All workers should know when and why certain PPE needs to be worn and that there is zero tolerance for a failure to wear it. One option, to encourage compliance, is to send the breaching employee(s) on a health and safety course. Employees who know why PPE is required are more likely to use PPE, and encourage a culture of acceptance, than employees who think they must simply wear it because it is 'company policy'. Or, if all else fails, the action might be classified as misconduct and official employment warnings issued. Always act in accordance with employment law requirements.
4. Use of PPE by employees should be audited by management regularly, observed by supervisors constantly, and the results recorded in writing.
5. Ensure PPE is comfortable and fitted properly. This may entail special modifications to suit individuals.

6. Purchase PPE that meets current New Zealand Safety Standards from approved suppliers/manufacturers.
7. Train staff how to recognise when PPE needs to be maintained or replaced and how to store gear properly. Have a system which ensures regular checks of PPE for wear and tear and a cleaning schedule that records the results in writing.
8. If employees refuse to wear PPE, try to ascertain why. Involve employees in the decision-making process and get feedback and suggestions regularly, perhaps with an anonymous element to elicit honest answers. Employees are the ones who deal with the issues on a daily basis and will often have good ideas when given the chance to voice them.

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