

Must An Employer Supply Insulated Coveralls for Winter?



SITUATION

A construction company supplies its workers with coveralls to protect their clothing from dirt and grease, prevent clothing from catching on equipment and provide visibility markings. The supplied coveralls aren't insulated. For the winter, crane operators demand coveralls that are insulated because they do some work outside their cabs, such as checking oil, applying grease and inspecting the crane. The company refuses, saying the provided coveralls are sufficient, workers can wear warm clothing underneath them and the cranes' cabs are heated. The collective agreement requires the company to provide free coveralls as part of the workers' PPE but doesn't specify insulated or uninsulated. The agreement also requires the company to supply safety headgear with a winter liner but makes no reference to any other kind of winter clothing. Some but not all employers at the construction site *do* provide insulated coveralls for their workers. The union files a grievance, claiming insulated coveralls are required for the crane operators' health and safety.

QUESTION

Must the company supply insulated coveralls for crane operators in the winter'

- A. Yes, because the OHS laws across Canada require employers to supply workers with all PPE free of charge.
- B. Yes, because it's industry practice to provide insulated coveralls.
- C. No, because the collective agreement doesn't specifically require insulated coveralls.
- D. No, because insulated coveralls aren't necessary PPE.

ANSWER

D. There's no evidence that insulated coveralls are necessary to protect the health and safety of crane operators in the winter.

EXPLANATION

This hypothetical is based on a Newfoundland decision in which the arbitrator ruled that a construction company wasn't required to provide workers with insulated coveralls for winter. The arbitrator examined the parties' collective agreement and found it only required 'coveralls' and didn't specify summer or winter/insulated or uninsulated. The arbitrator noted that another provision in the agreement did specify that winter liners be provided for safety headgear and reasoned the parties could've agreed that winter coveralls should also be required, but they didn't do so. In addition, the arbitrator said that no evidence demonstrated an OHS hazard to workers requiring them to have insulated coveralls to comply with the OHS law. Thus, the company's provision of uninsulated coveralls complied with the collective agreement and the OHS law, ruled the arbitrator.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because not all Canadian employers are required to supply PPE free of charge to workers. The OHS laws require workers to use PPE under certain circumstances. And some jurisdictions *do* require employers to supply that PPE for free. But even those jurisdictions have limitations or exceptions to this requirement. For example, Québec requires employers to supply for free only PPE that's required by regulation or selected by the JHSC. And although Manitoba requires employers to supply free PPE, construction workers must provide their own protective headgear. So the OHS laws across Canada don't automatically require employers, such as the construction company in this case, to provide PPE, such as insulated coveralls, free of charge to workers.

Insider Says: For more information about what the OHS laws say about who pays for PPE, see 'PPE: Can Employers Make Workers Pay for Their Own Protective Equipment' May 2009, p. 1.

B is wrong because although consistent industry practice could establish a PPE requirement in some circumstances, it doesn't in this case. If it's an industry standard for workers to use particular PPE to protect against a safety hazard, that PPE could be considered required even if it isn't specifically mandated by regulation or a collective agreement. For example, if it's standard in an industry for all workers to wear safety boots even if they don't technically need such PPE under the OHS laws, a court could consider requiring such workers to wear safety boots a reasonable safety measure necessary to prove due diligence. In this case, however, not all employers at this construction site supplied winter coveralls, so there isn't a consistent industry practice that would require this company to also supply insulated coveralls.

C is wrong because PPE could be required even if the collective agreement doesn't specifically make it mandatory. If workers are exposed to a safety hazard on the job, the employer's general duty under the OHS laws may require them to wear appropriate PPE, even if the parties haven't agreed that it's a requirement in the collective agreement. In short, the requirements under the OHS laws trump the terms of the collective agreement. Thus, the fact that this collective agreement only requires coveralls in general doesn't mean winter coveralls aren't required. If the working conditions exposed the crane operators to the risk of cold stress and other safety measures couldn't be implemented to keep them warm, they could be required to wear insulated coveralls regardless of what the collective agreement says.

SHOW YOUR LAWYER

Resource Development Trades Council of Newfoundland and Labrador v. Long Harbour Employers Ass'n, Inc., [2013] CanLII 12447 (NL LA), Jan. 7, 2013