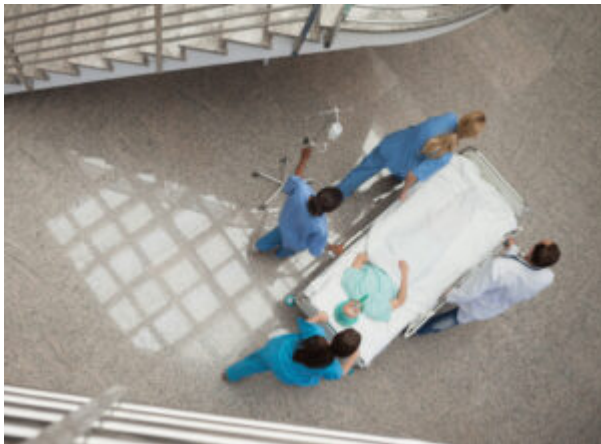


# Must Employer Pay for Nurse's Safety Footwear?



## SITUATION

A hospital's collective agreement says that 'where safety footwear is required,' it'll reimburse workers \$100 for boots once a year. A registered nurse purchases safety boots and asks the hospital for the \$100 reimbursement payment. The hospital refuses, arguing that it doesn't require the nurse to wear safety boots to perform his regular duties. It also notes that the nurse has never reported any work-related foot injuries. Just to be safe, however, the hospital has a team perform a hazard assessment to determine what's appropriate footwear for nurses and whether safety boots are required. That assessment determines that closed footwear is necessary for nurses, but protective boots aren't required for their safety. The union and the nurse argue that the collective agreement allows *the worker* to make a reasonable or objective determination as to whether safety footwear is necessary; the hospital says *it* gets to decide what's required based on hazard assessments.

## QUESTION

**Must the hospital reimburse the nurse for the safety boots'**

- A. Yes, because employers must always pay for PPE.
- B. Yes, because the nurse needed the footwear to protect his feet.
- C. No, because the hospital didn't expressly require nurses to wear safety boots.
- D. No, because no objective evidence established a need for safety boots.

## ANSWER

**D. No objective evidence demonstrated that nurses at the hospital needed to wear protective boots to do their jobs safely, so the hospital need not reimburse the nurse for such footwear.**

## EXPLANATION

This hypothetical is based on a decision by an Ontario arbitrator who decided the relevant collective agreement clearly mandated reimbursement when 'safety footwear is required.' In other words, reimbursement was necessary only when evidence demonstrated such footwear was required due to an identified hazard or based on a prior history of foot injuries. The union argued that the collective agreement's language allowed the worker to make the determination of whether safety footwear was 'required.' But the arbitrator said that argument might succeed only if there was 'an objective basis for the need for safety equipment that the Employer was ignoring.' In that case as well as the hypothetical, an assessment team had evaluated the hazards and determined that safety boots weren't required. And there was no evidence that the nurse had suffered prior foot injuries on the job. Thus, the hospital wasn't obligated under the collective agreement to reimburse the nurse for his safety boots.

## WHY THE WRONG ANSWERS ARE WRONG

**A is wrong** because the OHS laws across Canada don't uniformly require employers to pay for all PPE. In fact, only certain jurisdictions directly address who must pay for PPE and even those typically require workers to bear the cost for some types of PPE. For example, some jurisdictions specifically require workers to pay for their own safety footwear. (For more information about who pays for PPE, see 'PPE: Can Employers Make Workers Pay for Their Own Protective Equipment' May 2009, p. 1.) Here, just because the boots are considered an item of PPE doesn't mean the hospital must automatically pay for them.

**B is wrong** because there was no objective evidence that the nurse needed the boots for protection. He'd never injured his foot on the job. And a hazard assessment found no evidence such safety footwear was necessary to protect the nurse's feet while he was performing his normal duties. Therefore, because the collective agreement only required the hospital to reimburse workers when safety footwear was required and it wasn't required for the nurse, the hospital didn't have to pay for it.

**C is wrong** because whether safety footwear or other kinds of PPE is necessary isn't entirely up to the employer. The OHS laws often dictate when specific PPE must be worn based on the circumstances in the workplace. Even if the OHS laws are silent on a type of PPE, if a hazard exists, an employer can't decide not to require PPE when it's objectively necessary to protect workers from that hazard. Such conduct would violate employers' general duty to take all reasonable steps to protect workers from workplace hazards. So here, the reimbursement clause in the collective agreement would be triggered when either the hospital or the OHS laws required the use of safety footwear. (For further discussion of when safety footwear is required, see 'PPE: Safety Footwear Requirements under OHS Laws,' Feb. 2011, p. 1.)

## SHOW YOUR LAWYER

*Waypoint Centre for Mental Health v. Ontario Public Service Employees Union Local 329*, [2013] CanLII 34402 (ON LA), June 12, 2013