

Must Employer Supply Underwear as PPE if It Has for 20 Years?



SITUATION

For 10 years, an employer operating a nuclear generating station provides undergarments and outergarments to workers assigned to areas within the station where exposure to radioactive material is a risk and requires workers to wear those garments. But the employer doesn't commit to providing the undergarments indefinitely. And the collective agreement and OHS regulations are silent as to underwear. A review then indicates that special undergarments aren't needed for worker safety and, in fact, there's no evidence they provided any protection. So the employer revises its safety policy and no longer requires workers to wear special undergarments, although the employer continues to supply it. Ten years later, however, the employer announces it will no longer supply undergarments for workers. The JHSC recommends the continued provision of undergarments to workers. The employer considers that recommendation but sends the JHSC a written response declining to follow it. So the workers' union files a grievance.

QUESTION

Must the employer continue supplying undergarments'

- A) Yes, because the JHSC recommended that it do so.
- B) Yes, because the employer is obligated to provide any PPE that workers request.
- C) No, because neither the employer's policy nor the collective agreement requires workers to wear employer-supplied undergarments.
- D) No, because the employer made no representation about indefinitely supplying undergarments.

ANSWER

D. The employer didn't specifically represent to workers that it'd continue supplying undergarments indefinitely.

EXPLANATION

This hypothetical is based on a decision by the Ontario Labour Relations Board in which the board ruled that despite providing undergarments for 20 years, that practice, without more, wasn't enough to obligate the employer to continue doing so. The employer and union had never discussed undergarments in collective bargaining agreement negotiations and the collective agreement was silent on the issue. In addition, the employer's policy no longer required special undergarments to be worn by workers because the evidence showed they weren't necessary for safety. And the OHS law didn't require the wearing of special undergarments. Lastly, the employer never made any representation or promise that it would continue providing the undergarments indefinitely.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because employers aren't required to follow or implement the JHSC's recommendations. Rather, the OHS law requires employers to consider such recommendations, respond to them and implement those that are legally required. (For more information, see '[Minimize Liability Risks When Rejecting](#)

[Unrealistic JHSC Recommendation](#), July 2005, p. 1.')

Here, the employer considered the JHSC's recommendation and responded to it in writing. And because special underwear isn't required under either OHS law or the collective agreement, the employer wasn't obligated to follow that recommendation.

B is wrong because workers don't get to dictate to the employer what PPE they should have. OHS laws may require workers to use PPE when necessary to protect them from safety hazards, such as respirators to protect them from inhaling toxic fumes. But those laws [don't always obligate the employer to provide the PPE](#). And even if the employer must supply the PPE, it must provide the equipment or safety clothing that's appropriate for the safety hazard—not the worker's PPE of choice. In this case, even though the workers want the employer to continue providing the special underwear, the employer isn't obligated to do so by OHS law. And there's no evidence that such undergarments are needed to protect workers from a safety hazard.

C is wrong because company policy and the collective agreement aren't the determining factors in deciding whether workers must use specific PPE. Rather, the OHS laws dictate when PPE is required. So if the OHS laws require employers to provide workers exposed to radioactive material with special undergarments, the employer would be required to do so—even if its policy or collective agreement don't require the use of such PPE.

SHOW YOUR LAWYER

[Labourers' International Union of North America v. Ontario Power Generation Inc.](#), [2013] CanLII 44720 (ON LRB), July 12, 2013