

Must Employers Pay for the PPE Workers Are Required to Use?



It all depends on the province and type of PPE required.

One of the fundamental duties of OHS law is to ensure that your workers use the PPE required to protect them against the hazards they face at work. It's a perfectly necessary rule. The problem is that head protection, eye and face protection, respirators, fall protection harnesses and other kinds of PPE can be quite expensive. And that raises a question of immediate importance, especially in these hard times where so many companies are looking to cut costs:

Can you make workers pay for their own PPE or are you obligated to furnish it at company expense?

The simplicity of the question belies the complexity of its answer. The rules are different in each part of the country. There are 14 jurisdictions in Canada. In 7 of them, the OHS rules governing who's responsible for paying for PPE are clear and straightforward; in the other 7, the rules are totally vague and ambiguous. This briefing will make it easy for you to keep track of the requirements no matter where you operate.

The 7 Employer Pay Jurisdictions

In BC, Manitoba, Qu bec, Saskatchewan, Northwest Territories, Nunavut and Yukon, the basic rule is that employers must provide all of the PPE required by OHS regulations to the workers that need it at no cost to those workers. In Qu bec, the rule is absolute and also applies to items that the joint health and safety committee (JHSC) determines are necessary for the workplace even though they're not expressly required under the OHS regulations. In the other 6 employer-must-pay jurisdictions, exceptions apply. Thus, workers are responsible for providing their own:

- **Safety headwear** in BC and Manitoba. Note: In the latter province, the exception applies only to safety headwear required at a construction site. Thus, Manitoba employers must still pay for the headwear workers are required to use at non-construction sites.

- **Safety footwear** in BC, Manitoba Saskatchewan and the 3 territories. Note: Employers are still on the hook for the costs of certain kinds of required protective footwear in Manitoba, Saskatchewan, Northwest Territories and Nunavut, namely, toe caps, metatarsal protection and footwear protecting against hot, corrosive or toxic substances.
- **General purpose work gloves** in BC and Yukon;
- **Leg protection**, including safety pants or chaps in Saskatchewan, Northwest Territories and Nunavut; and
- **Clothing to guard workers against the natural elements** in BC and Yukon. Note: Although not spelled out, the requirement (or at least expectation) that workers furnish their own raincoats, parkas, sun hats, etc., would likely apply in all other jurisdictions as well.

Compliance Pointer: BC takes the employer pay rule a step further by requiring employers to furnish alternative PPE (or take measures making it unnecessary for the worker to use the PPE) if workers are allergic or have health issues with the equipment provided.

The 7 Jurisdictions that Don't Clearly Specify Who Must Pay for PPE

Determining your financial responsibility for required PPE is much more challenging if your workplaces or operations are subject to Federal, Alberta, New Brunswick, Newfoundland, Nova Scotia, Ontario or Prince Edward Island OHS laws. That's because those jurisdictions don't spell out who has to pay for PPE. Instead, they impose 2 basic kinds of PPE obligations on employers:

- **Duty to provide PPE:** There are certain kinds of PPE and protective equipment that employers must not only ensure that workers have and properly use but also 'provide';
- **Duty to ensure use of PPE:** Some sections of the OHS regulations require only that employers ensure that workers properly use the necessary PPE without saying they must provide it.

The case can be made that the duty to provide PPE means that employers must provide it at their own expense. The problem is that the regulations don't define the term 'provide' or include any other language directly explaining who must pay for required PPE. That leaves it open for employers to shift the costs of required-to-provide PPE to workers.

Surprisingly, there isn't much guidance from OHS regulatory agencies that sheds light on whether 'provide' means pay. In 2006, Nova Scotia did publish guidance saying that provide means provide at no cost to workers. But that guidance has since been withdrawn. The only other OHS agency that has addressed the issue takes the opposite position. According to WorkSafeNB guidance from 2000, the term 'may or may not mean that the employer actually pays for the equipment. WorkSafeNB believes that this decision is best made by the workplace parties' and that paying for PPE is a matter of 'internal company policy,' rather than regulation.

So, if 'provide' isn't the same as pay, what **does** it mean? WorkSafeNB conjures up the example of a company that requires workers to buy their own PPE but the item is hard to obtain locally. In that situation, the company would have to

‘ensure that the equipment is made available to the employee, for purchase.’

Compliance Strategy

If you’re in one of the 7 jurisdictions where the PPE payment rules are unclear, the ‘provide’ rule can still help you get a better handle on compliance.

Explanation: Even though the duty to provide doesn’t necessarily mean provide at company expense, grouping PPE into separate provide/just-ensure-safe-use baskets may enable you to determine which equipment you **might be** required to pay for under OHS regulations. Rule of thumb: While you’re always obligated to ensure proper use of PPE, your payment responsibilities would likely be limited to the items that you’re required to also provide.

Here’s an item-by-item breakdown for companies subject to Federal, Alberta, New Brunswick, Newfoundland, Nova Scotia, Ontario and Prince Edward Island OHS laws.

Employer PPE OHS Duties

EMPLOYER PPE OHS DUTIES

Type of PPE	Provide & Ensure Safe Use	Just Ensure Safe Use
Fall protection	FED, AB, NB*, NL, NS, ON, PEI	
Respiratory protection	FED, AB, NB*, NL, NS, ON	PEI
Hearing protection	FED, NB*, ON, PEI	AB, NL, NS
Eye & Face protection	FED, NB*, PEI	AB, NL, NS, ON
Head protection	NB*	FED, AB, NL, NS, ON, PEI
Foot protection	NB*	FED, AB, NL, NS, ON, PEI
Skin protection	FED, NB*	AB, NL, NS, ON, PEI
Drowning protection	FED, NB*, NS, PEI	AB, NL, ON

* New Brunswick OHS guidance specifies that provide doesn’t necessarily mean pay for