

		RSD Internal Guidance		RIG-2002-10	
CHARGING TO ENSURE RETURN OF PERSONAL PROTECTIVE EQUIPMENT (PPE)					
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Keywords		Personal protective equipment: PPE, charging			
Summary		This RIG clarifies the advice health and safety inspectors may give to railway industry employers about charging to ensure the return of personal protective equipment (PPE) when an employee leaves their employment			
Original consultation		Jill Moore Topic Strategist			
Subsequent consultation		2012: Legal Safety Enforcement Team 2014: Legal Safety Enforcement Team			

Issue

Some employers in the railway industry (especially labour-only subcontractors) claim to have a very high turnover of staff, and have expressed concern that workers may leave their employment, often after only a comparatively short time, without returning issued PPE. This has substantial cost implications, and employers have asked whether they may levy a returnable deposit as an incentive to ensure employees give the equipment back.

Detail

1. Under HSW Act s.9, an employer cannot charge for anything 'done or provided in pursuance of any specific requirement of any of the relevant statutory provisions'. The Personal Protective Equipment at Work Regulations 1992 (PPEWR 92) are relevant statutory provisions, so no charge may be made for any PPE required to be provided under them or the other circumstances listed in PPEWR 92 regulation 3.

2. However, the policy does allow employers to charge for PPE which is provided for other reasons - for example company policy or arising out of a contractual requirement for employment - and not under a relevant statute. Therefore, schemes for part payment towards the cost of PPE are still permitted, provided that the PPE is not for use in circumstances where regulation 4 of PPEWR 92 requires it to be provided because risks would not otherwise be adequately controlled.

CHARGING A DEPOSIT FOR PPE

3 It is important to distinguish between situations where PPE is required by PPEWR and those where it is not, but the employer has a rule requiring workers to wear it. In the latter case, ORR has no role.

4 An employer cannot ask for money from an employee for PPE, whether it is returnable or not. This includes agency workers if they are legally regarded as employees. However, if employment has been terminated and the employee keeps the PPE without the employer's permission, then as long as it has been made clear in the contract of employment, the employer may be able to deduct the cost of the replacement from any wages owed.

5 Where employers wish to charge, once employment has ceased, to ensure return of PPE (or includes the provision for doing so in a contract of employment), Inspectors should advise that this becomes primarily a civil matter to do with contracts of employment and company rules, and as such not enforceable by ORR. Enquirers should be encouraged to seek advice from a competent employment law specialist.

Action

Inspectors are asked to note the above advice, and should not seek to become involved in disputes about charging for PPE where employment has ceased and there is a dispute about PPE not having been returned. Inspectors should only intervene where there is evidence that a breach of s.9 of HSWA by an employer is leading to a breach of HSW Act s.2 or relevant statutory provisions in relation to employees.