

To: CSI Clients
From: Sam Celly
Sub: Foot Protection Requirements
Date: October 20, 2015

BACKGROUND: Safety inspections of the shop, parts, and car wash area have revealed that many employees are not wearing appropriate footwear that will protect them from foot injuries caused by crushing or falling objects, such as a rotor or a battery. Penetrating actions may happen from a sharp object left on the shop floor. Also, footwear in the shop area must be slip resistant when employees are working on slippery surfaces, since slip hazards are common due to accidental spills of lubricants in the shop. The porters in car wash are also subject to slip and fall hazards created by water and/or soap on the floor, and as such, their shoes must provide traction.

WHAT DO THE REGULATIONS SAY:

The Cal/OSHA regulation (T8CCR3385) is stated as follows:

- (a) Appropriate foot protection shall be required for employees who are exposed to foot injuries from electrical hazards, hot, corrosive, poisonous substances, falling objects, crushing or penetrating actions, which may cause injuries or who are required to work in abnormally wet locations.
- (b) Footwear which is defective or inappropriate to the extent that its ordinary use creates the possibility of foot injuries shall not be worn.
- (c) (1) Protective footwear for employees purchased after January 26, 2007 shall meet the requirements and specifications in American Society for Testing and Materials (ASTM) F 2412-05, Standard Test Methods for Foot Protection and ASTM F 2413-05, Standard Specification for Performance Requirements for Foot Protection which are hereby incorporated by reference.

The federal regulation listed under CFR 1910.136(a) is stated as follows:

- The employer shall ensure that each affected employee uses footwear when working in areas where there is danger of foot injuries due to falling objects, or objects piercing the sole, or when the use of the protective footwear will protect the employee from an electrical hazard, such as static discharge or electric shock hazard, that remains after the employer has taken other protective measures.
- The footwear must meet the requirements and specifications in American Society for Testing and Materials (ASTM) F 2412-05, Standard Test Methods for Foot Protection and ASTM F 2413-05, Standard Specification for Performance Requirements for Foot Protection which are hereby incorporated by reference or ANSI Z41-1991, “American National Standard for Personal Protection—Protective Footwear”

WHAT DOES THE OSHA APPEALS BOARD SAY: An employee was working in a warehouse setting when a heavy object fell on his foot and crushed his foot. Cal/OSHA investigated and cited the employer for failure to provide foot protection. A *serious* citation followed with a fine of \$18,000. The employer appealed the citation, but the Appeals Board upheld the citation and penalty and found that employers are required to provide appropriate foot protection when the employees are exposed to a hazard from falling objects that can cause a foot injury. See State of California Occupational Safety & Health Appeals Board (COSHAB) decision in <https://www.dir.ca.gov/oshab/decisions/10-R3D6-3284.pdf#zoom=100>.

BEST PROTECTION: The *technician shoe* is an appropriate shoe under normal circumstances in the shop area. The shoe has metatarsal protection with a skid resistance sole. Metatarsal protectors consist of a guard that fits over the instep protecting the top of the foot from heavy items and are normally manufactured from aluminum, steel, or lightweight composites. This shoe creates a balance for foot protection from falling objects while not being as heavy as steel toed shoes. Certain studies have indicated that the heavy steel toe shoe use by technicians, who move around the shop all day, has caused injury to their ankles and feet. Technicians have stated that in certain circumstances, steel toed shoes have exacerbated an injury caused by the fall of a heavy object when the steel plate cut into the feet of the employee. In summary, steel toed shoes are not banned from the workplace per se, but their utility must be evaluated given the disadvantages stated above. Similarly, parts department employees must wear shoes that provide metatarsal protection. The car wash staff and other staff who walk through the shop area must also wear shoes with soles that provide slip resistance and good traction.

Note: Cal/OSHA regulations, as stated above, state that footwear that creates the possibility of foot injuries shall not be worn and hence, any shoes that may cause injuries from ordinary use in the shop area should not be used.

HAZARD ASSESSMENT: OSHA regulations require that the employer conduct a workplace hazard assessment and provide PPE for protection from physical and health hazards present at the workplace. If the hazard assessment of parts and service employees indicates the possibility of a foot hazard injury from falling objects, PPE should be provided. See Title 8 California Code of Regulations Section 3380. Fed-OSHA requirements on Hazard Assessment and Personal Protective Equipment selection are listed under CFR 1910.132 (a-d).

WHO PAYS FOR FOOTWEAR: The California Labor Code requires employers to “furnish and use safety devices and safeguards...” (Labor Code § 6401). The term “safety device” includes “any practicable method of mitigating or preventing” danger. Protective footwear is covered as a safety device. The Labor Code also requires employers to “provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.” (Labor Code § 6403). Legal opinion on this matter has been made clear by the California Supreme Court. The Court has ruled that the words “provide” and “furnish” mean that the employer both supplies and pays for the personal protective gear. (See *Bendix Forest Products Corp. v. Division of Occupational Safety & Health* (1979) 25 Cal. 3rd 465, 471-473).

Federal regulations provide exceptions, in which the employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) provided the employer permits such items to be worn off the job-site. OSHA Standards, 29 CFR 1910.132(h)(2). The technician shoe, as stated earlier, needs metatarsal protection to protect the foot from heavy falling objects. The employer would then be required to provide shoes with metatarsal protection. If the employee is allowed to wear shoes with metatarsal protection, at his or her request, the employer is not required to reimburse the employee for the shoes or boots. See 29 CFR 1910.132(h)(3) and 1926.95(d)(3).

PROTECTIVE SHOE POLICY & ENFORCEMENT: The employer must provide shoes to each employee subject to foot injury hazards. Since shoes must be fitted for size and comfort, it is practical to seek help from a professional shoe supply company. Replacement upon wear and tear of the PPE is also the responsibility of the employer, along with instructions on proper usage, care, cleanliness, and maintenance. A written protective footwear policy should be adopted and distributed to all employees, and employee acknowledgment should be retained in files. Enforcement of policy along with disciplinary action against employees violating the policy must also be put into effect.

SUMMARY: Proper footwear is not an option, but is a requirement under the law. California laws are clear that the employer provides for the protective shoe, whereas the federal regulation contains exemption under certain circumstances. Employees with their feet protected are less likely to be injured from falling objects. Shoes with good traction help mitigate slip and fall hazards. Fewer injuries translate to fewer workers' compensation claims and a reduction in related premiums. Improved productivity, better employee morale, and increased shop efficiency are also a given.

DISCLAIMER: *Information from the Fed-OSHA and Cal/OSHA website was obtained to prepare this newsletter. The contents of this newsletter are for informational purposes only and not to be considered as legal advice. Employers must consult with their lawyer for legal matters and safety consultants for matters related to safety. Chris Scali of the Scali Law Firm (www.scalilaw.com) contributed to this newsletter. The article was authored by Sam Celly of Celly Services, Inc., who has been helping automobile dealers comply with EPA & OSHA regulations since 1987. Sam received his BE (1984) and MS (1986) in Chemical Engineering, followed by a J.D. from Southwestern University School of Law (1997). Our newsletters can be accessed at www.epaoshablog.com. Your comments and questions are always welcome. Please send them to sam@cellyservices.com.*