

TerranearPMC Safety Share

Week of April 3, 2017 – Exemption to Wearing PPE

A number of years ago, I had the opportunity to visit England. Aside from the obvious tourist attractions, such as Buckingham Palace, the Parliament and other historical and noteworthy structures (don't forget the pubs!), I couldn't help but notice the construction crews throughout the city; specifically, the number of workers that did not wear hard hats. It was clear that the persons not wearing hard hats did so due to religious beliefs, as they wore the traditional head turban, known as a Dastaar or Pagri or Pagg. This meant that these workers were not properly protected even though they were working in close proximity to such heavy equipment as bull dozers and excavators. My first thoughts had to do with the legality of persons not wearing the required PPE. After all, other workers were wearing hard hats and the sight of workers in the same work site performing the same work, while wearing different levels of PPE always conjure up the question, "What's wrong with this picture?"

A Dastaar is associated with followers of the Sikh faith and is mandatory to wear at all times. Among the Sikhs, this item is an article of faith that represents honor, self-respect, courage, spirituality, and piety and has been an important part of the Sikh religion since the time of the First Guru. As the Sikh faith explains, Guru Angad Dev honored Guru Amar Das with a special Dastaar when he was declared the next Guru. Ever since, the Dastaar has been considered to be a sacred part of the Sikh religion declaring their religious identify. And while such a religious garment is similar to other faiths, such as in the Jewish tradition of wearing a skull cap or yalmakah, a hard hat cannot be worn with a turban, thereby leaving workers of a particular faith susceptible to serious head injuries. Then again, there are quite a number of faiths throughout the world where men are required to grow their facial hair; a definite violation for wearing respiratory protection.

So while observing construction projects in the UK, aside from seeing crew members not having consistent personal protective equipment, as a S&H professional, I had an inclination to understand how having persons not wearing the appropriate PPE would effect a company's ability to assure their workers would be properly protected from workplace hazards. As it turns out, this is an international issue, and has been addressed in the United States as well. Below is a chronological presentation of how our government has addressed PPE exemptions over recent years.

- October 30, 1978: OSHA Instruction STD 1-6.3, *Exemption from Wearing Hard Hats*, was issued. The instruction provided an exemption from citations for hard hat violations for employers when their workers, who were members of the Old Order Amish or Sikh Dharma Brotherhood religious communities, failed to wear hard hats due to their personal religious convictions.
- November 5, 1990: OSHA Instruction STD 1-6-3 was canceled. This occurred following the U.S. Supreme Court decision in **Employment Division, Department of Human Resources v. Smith**, 110 S.Ct. 1595 (1990) (the peyote case), which held the Free Exercise of Religion Clause of the First Amendment of the United States Constitution does not relieve any individual of the obligation to comply with a neutral, generally applicable law, notwithstanding the dictates of the individual's religious practice.
- July 24, 1991: OSHA's policy concerning the exemption from wearing hard hats was reinstated, and was even broadened to include any employee who for religious reasons objected to wearing hard hats in the workplace.



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- November 16, 1993: President Clinton signed into law the Religious Freedom Restoration Act of 1993, P.L. 103-141 (RFRA). This law contains findings that laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise, and that governments should not substantially burden religious exercise without compelling justification.

RFRA further states that government may not substantially burden a person's exercise of religion unless they demonstrate that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. As such, OSHA has decided to grant an exemption from citations to employers of employees who, for reasons of personal religious convictions, object to wearing hard hats in the workplace. Nevertheless, the RFRA does recognize that there may be circumstances in the future that would involve a hard hat hazard sufficiently grave to raise a compelling governmental interest for requiring the wearing of hard hats, notwithstanding employee personal religious convictions.

I remember a story told to me by a colleague that was assigned work in Germany. It was summer and the employees at this particular facility were working with large power saws in short pants and without any face or eye protection. I explained that it was my understanding that Germany had some of the most advanced worker protection laws in the international community. My friend simply smiled and told me that all the workers understood their responsibility to wear the required PPE, but since it was so hot with high humidity, they choose NOT to wear their assigned PPE. He further explained that since they decided not wear their PPE, any accident that they may incur due to their decision, would be their fault and, as such, would assume the responsibility and would not blame their company. That's quite a moral work culture; however, this is no guarantee that each worker would adhere to such high personal ethics; whether in Germany, England or the United States.

Aside from an individual's own decision to not wear PPE, there may be certain instances where other people's safety may be compromised. Take, for example, a worker entrusted with shutting down the power in the event of a gas leak. Such a scenario would require respiratory protection. But if that person did not shave (due to religious or personal reasons), not only are they jeopardizing their well-being, but if they cannot reach the power shut-off, due to succumbing to a toxic inhalation hazard, they have now placed their fellow workers in the same danger.

Should workers have the freedom to refuse to wear PPE? While individuals have rights – whether religious or personnel - to live their life according to their wishes, do they have the right to place themselves in harms' way? How about placing co-workers in jeopardy? And what about the consequences of one's actions? What happens to a family when a provider is no longer able to provide? In many cases, the answer may lie in employing measures other than PPE. Maybe even exercising job reassignment or using engineering controls. But sometimes PPE may be the only feasible control method. It seems that there is no clear-cut answer to this concern and each individual case will have to be addressed based on its own specific set of circumstances.

It takes courage to grow up and become who you really are.

e. e. cummings

