



Changes to the PPE Regulations

Briefing

Introduction

This briefing note reminds employers that from the 6th April 2022, the law in relation to personal protective equipment (PPE) is extended to include workers who are not employed, however are subject to any other form of contract.

Issue

For employers, the existing requirements of the Personal Protective Equipment at Work Regulations 1992 only apply to employees. These regulations are being amended to extend this duty to include people who are not employed, however are subject to contract, eg casual and temporary workers. This means that the existing duties in relation to employees will now apply equally to this additional group of workers.

Employers will be required to provide PPE free of charge to this group of workers and ensure that the requirements of the existing regulations are met. Therefore the hierarchy of control measures applies, and PPE should only be provided as a last resort. In addition:

- PPE should be provided where identified through the process of risk assessment
- The correct PPE should be provided for the activity and it should be used
- Suitable information, instruction and training in the use of the PPE should be provided
- The PPE should be is maintained, stored and replaced as necessary.

This amendment following a judicial review which found that the UK government had failed to fully implement two EU directives. As a result an additional group of workers (known as limb (b) workers under section 230(3) of the Employment Rights Act 1996) will now be covered by the regulations. These are workers who generally have a more casual employment relationship and work under a contract for service, many of who are part of the gig economy.

The HSE defines this group of workers as follows:

- Carry out casual or irregular work for one or more organisations
- May receive holiday pay, however no other employment rights
- Work when and if they choose to
- Have a contract or other arrangement to do work or services personally for a reward and have a limited right to send someone else to do the work
- Are not in business for themselves, e.g. do not advertise services.

As a result, The Personal Protective Equipment at Work Regulations 1992 are amended by the Personal Protective Equipment at Work (Amendment) Regulations 2022. The main change being that 'employee' is replaced by 'worker' meaning:

An individual who has entered into or works under:

- (a) a contract of employment; (this is the existing definition) or*
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.*

(this is the extended definition).

These amendments do not apply to the self-employed. They are already specifically covered by the existing regulations.

Action

Employers should:

- Identify if there are any workers who are not directly employed and are subject to a contract
- Through the process of risk assessment, identify any PPE required for this additional group of workers
- Provide the correct PPE for the activity
- Provide information, instruction and training on the use of the PPE
- Monitor that the PPE is being used
- Make arrangements for the maintenance, storage and replacement of the PPE as necessary.

If there are no such workers, then no further action is required. However, there is also an opportunity to review existing PPE provisions and ensure that:

- The principle of PPE being used as a last resort is being followed.
- The correct PPE is being provided for the activity and is it being used properly.

Further information

HSE guidance:

<https://www.hse.gov.uk/ppe/ppe-regulations-2022.htm>

(Further HSE guidance is planned).