

South Carolina Department of Labor, Licensing and Regulation
Division of Labor
Office of Occupational Safety and Health
Columbia, South Carolina 29211

OSH Program Directive Number 94-1910.135/1926.100-1/1

Subject: Exemption for Religious Reasons From Wearing Hard Hats.

Standard: Subarticle 6, § 1910.135(a)(1),(2): 1926.100(a), Rules and Regulations, Director of Labor, State of South Carolina.

Cross Reference to

Federal Standards: 29 CFR 1910.135(a)(1),(2), 1926.100(a)

Background:

(a) On November 16, 1993, President Clinton signed into law the Religious Freedom Restoration Act of 1993, P.L. 103-141(RFRA).

(1) RFRA 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.

(2) RFRA restores the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972); guarantees its application in all cases where free exercise of religion is substantially burdened; and provides a claim or defense to persons whose religious exercise is substantially burdened; and provides a claim or defense to persons whose religious exercise is substantially burdened by government.

(3) Under RFRA, federal, state and local governments 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.

(b) 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. There may be, however, 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.

Interpretation: Compliance personnel shall adhere to the following guidelines:

- (a) There shall be no citations or other enforcement actions against employers for violations of hard hat standards when their employees fail to wear hard hats due to personal religious convictions.
- (b) Citations may be issued to employers of construction workers, with such convictions, for failure to instruct them about overhead hazards, as required by Subarticle 6, Section 1926.21(b)(2), as with employers of construction workers without such objections.
- (c) Employers of non-construction workers, with or without such convictions, should also instruct their workers about such hazards.
- (d) All instances of an employee's refusal to wear a hard hat or any other personal protective equipment due to the employee's personal religious conviction, shall be reported to the compliance manager so that such instances of refusal can be monitored.
- (e) Whenever a citation is being considered because of an employee's refusal to use personal protective equipment (other than a hard hat) due to a personal religious conviction, the compliance manager shall be informed and shall discuss the matter with the assistant OSHA administrator prior to the issuance of any citation.

Effective Date: This directive is effective upon receipt and will remain in effect until cancelled or superseded by amendment to the Rules and Regulations.

William M. Lybrand
September 9, 1994