



MNOSHA Instruction **CPL 2-2.16D**

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## **SUBJECT: Safety Shoes in General Industry and Construction**

### **Purpose:**

To provide investigators with citation guidelines for protective footwear violations.

### **Scope:**

This instruction applies MNOSHA-wide.

### **Background:**

Until October 29, 1994, Minnesota OSHA enforced the original 1910 Subpart I for the use of safety shoes in General Industry. There was not a specific paragraph which required the use of safety shoes; only a generic requirement for personal protective equipment (PPE), and a specification that all safety shoes must meet the requirements of ANSI Z41.1-1967. Identical provisions are contained in the current 1926 Subpart E. Under the old general industry standard and the current construction standard, the burden of proof that the employer must provide safety shoes rested on OSHA, and previous enforcement directives outlined the elements of proof necessary for the OSHI to support a safety shoe violation.

The 10/29/94 amendment of 1910.132 - .138 is significant in that it not only adds a specific requirement for the employer to provide safety shoes and other PPE, but it additionally requires the employer to perform a background hazard assessment and to provide training to employees on the use of required PPE.

The issue of who is required to pay for the cost of required PPE is not addressed in the standard. However, current interpretation of MN Statute §182.655 Subd.10a. is that the employer is responsible to determine the minimum cost of PPE that is of a type necessary for the job being performed. If employees want more expensive PPE, the employer has the option to pay the entire cost or have the employee pay the difference between the minimum type necessary to provide the protection and the option the employee is selecting.

Since the 1910 and 1926 requirements for providing protective footwear differ, the References and Action (enforcement guidelines) for General Industry and Construction are discussed separately in this directive.

## Cancellation:

This instruction cancels CPL 2-2.16, dated November 19, 2010.

## References:

ANSI Z41.1-1967  
ANSI Z41-1991  
ANSI Z41-1999  
ASTM F-2412-2005  
ASTM F-2413-2005  
ASTM F-2412-2011  
ASTM F-2413-2011  
29 CFR 1910.132 and 1910.136  
29 CFR 1926.95 and 1926.96  
MS §182.655 Subd. 10a

### A. General Industry

1. **1910.132(d)** requires that employers perform a hazard assessment to determine if hazards are present or are likely to be present which necessitate the use of PPE for the head, eyes and face, hands and feet. If such hazards are present or are likely to be present, the employer shall select and have affected employees use PPE appropriate to protect them from the identified hazards, communicate selection decisions to affected employees, and select PPE that properly fits each affected employee.
2. **1910.132(f)** requires that employers provide training to each employee who is required to use PPE on what equipment to use, when to use it, and how to use it, as well as the limitations of the PPE and the proper care, maintenance, useful life and disposal of the PPE.
3. **1910.136(a)** requires that employers ensure that each affected employee uses protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects, or objects piercing the sole, and where such employee's feet are exposed to electrical hazards.
4. **1910.136(b)(1)** requires that protective footwear comply with any of the following consensus standards: ASTM F-2412-2005, ASTM F-2413-2005, ANSI Z41-1999, or ANSI Z41-1991.
5. **1910.136(b)(2)** states that protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the consensus

standards listed in 1910.36(b)(1) will be deemed to be in compliance with the requirements of this section.

6. **Minnesota Statute §182.655 Subd.10a.** states that "standards shall prescribe suitable protective equipment...and this equipment shall be made available by and at the cost of the employer."

## **B. Construction**

1. **1926.95(a)** requires the employer to provide personal protective equipment where it is necessary to prevent injury.
2. **1926.96** requires that safety shoes meet the specifications of ANSI Z41.1-1967 in providing adequate protection against foot and toe injury.
3. **Minnesota Statute §182.655 Subd.10a.** applies to the employer responsibility to pay for required personal protective equipment as outlined above. 1926.95(d) discusses payment for personal protective equipment including foot protection, but is superseded by MN Stat. §182.655 Subd.10a.

## **ACTION:**

### **A. GENERAL INDUSTRY**

1. 1910.136(a) will be cited where safety shoes are not provided and the OSHI recognizes a hazard potential for foot and toe injuries, or where the employees' feet are exposed to electrical hazards. The OSHI must document this exposure using the criteria set out in B.1.a -e of this directive. This should generally be cited serious.

Where safety shoes are provided but are not adequate, cite either 1910.132(e) if they are not free from damage or defects, or 1910.136(b)(1) if they do not comply with ASTM or ANSI requirements to adequately protect the employee's feet from injury.

2. 1910.132(d)(2) will be cited where the OSHI recognizes a hazard potential for foot and toe injuries and the employer has not done a hazard assessment, if safety shoes are not provided. This should generally be cited serious and cited with 1910.136(a).

Where the employer provides safety shoes as part of an existing safety shoe program, MNOSHA will allow the employer's policy of requiring all employees to wear safety shoes to serve as evidence of adequate hazard assessment, and 1910.132(d) will not be cited.

3. 1910.132(f) will be cited where the OSHI recognizes the hazard potential for foot and toe injuries and the employer has not provided training or has not provided complete training, whether or not safety shoes are provided or a hazard assessment has been done. This should generally be cited non-serious if cited alone, or serious if cited with 1910.136(a).
4. MN Stat. §182.655 Subd.10a. will be cited where safety shoes are provided but not paid for by the employer. The investigator should reference 1910.136(a) in the citation AVD. The need for protective footwear should be substantially documented in the instance description of the 1B-worksheet using the criteria set out in B.1.a - e of this directive. Since the issue of payment is not directly related to employee safety (foot protection is already provided by safety shoes) this should be cited as non-serious. All cases where MN Stat. §182.655 Subd. 10a. is cited will be forwarded for OMT review.
5. If the wearing of protective footwear is a condition of employment, but there is not enough evidence to support a citation of 1910.136(a), a citation will not be issued under MN Stat. §182.655 Subd. 10a, for failure to pay for safety shoes.

## **B. CONSTRUCTION**

1. 1926.95(a) will be cited where safety shoes are not provided and the investigator can document the case file with information that supports:
  - a. A record of foot and toe injuries suffered by employees of this construction company.
  - b. Specific tasks performed by employees which expose them to foot and toe injuries.
  - c. Vulnerability of objects to fall on employees' feet.
  - d. Employer knowledge of the hazard, as evidenced by work rules or current PPE policy.
  - e. An industry-wide use of protective footwear for this type of construction activity.

In some cases, one or more of the above elements may be missing but other elements may be so evident and obvious that a citation can still be supported. This should be cited serious since the most likely injury to occur without foot and toe protection is a disabling one. The type of required protection, (i.e., toe or metatarsal) should be outlined in the citation and the employer would be required to pay the full cost of protective equipment. All cases where citations are proposed concerning safety shoes in construction will be forwarded for OMT review.

2. MN Stat. §182.655 Subd.10a. will be cited where safety shoes are provided but not paid for by the employer. The investigator should reference 1926.95(a) in the citation AVD. The need for protective footwear should be substantially documented in the instance description of the 1B-

worksheet to the same degree as B.1 above. Since the issue is not directly related to safety (foot protection is already provided by safety shoes) this should be cited as nonserious. 1926.95(d) discusses payment for personal protective equipment including foot protection, but is superseded by MN Stat. §182.655 Subd.10a.

3. If the wearing of protective footwear is a condition of employment, but there is not enough evidence to support a citation of 1926.95(a) as outlined in the B.1 above, a citation will not be issued under MN Stat. §182.655 Subd.10a. for failure to pay for safety shoes.
4. 1926.96, Ref ANSI Z41.1-1967 will be cited for defective safety footwear that does not meet ANSI requirements to adequately protect against foot or toe injury. If the footwear meets ANSI requirements but is not free from damage or defects, cite 1926.95(a). This should generally be cited serious.

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