

Risk Management Bulletin

A Bulletin for Members of the South Dakota Public Assurance Alliance and the SDML Workers' Compensation Fund

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Link to Web Page Worker Visibility Law

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New Worker Visibility Requirements

On November 24, 2008 a new Federal law, 23 CFR Part 634, went into effect covering worker visibility within the right-of-way of any Federal-aid-highway. The purpose of the new regulations "is to decrease the likelihood of worker injuries or fatalities caused by motor vehicles and construction vehicles and equipment while working within the right-of-way on Federal-aid-highways". This Risk Management Bulletin will attempt to clarify and answer some of the questions that we have been receiving regarding these new regulations.

Definitions

Workers are defined in 634.2 as "people on foot whose duties place them within the right-of-way of a Federal-aid-highway, such as highway construction and maintenance forces, survey crews, utility crews, responders to incidents within the highway right-of-way and law enforcement personnel when directing traffic, investigating crashes, and handling lane closures, obstructed roadways, and disasters within the right-of-way of a Federal-aid-highway".

High-visibility safety apparel, as defined in 634.2, means "personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage, and meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear".

Rules

Section 634.3 states, "All workers within the right-of-way of a Federal-aid-highway who are exposed to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel".

Interim Ruling:

This new Federal law was recently amended. Section 634.2 under the definition of workers now includes, "firefighters and other emergency responders when they are not directly exposed to flame, fire, heat, and/or hazardous materials".

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Section 634.3 was amended to include “firefighters or other emergency responders working within the right-of-way of a Federal-aid highway and engaged in emergency operations that directly expose them to flame, fire, heat, and/or hazardous materials may wear retroreflective turn-out gear that is specified and regulated by other organizations, such as the National Fire Protection Association. Firefighters or other emergency responders working within the right-of-way of a Federal-aid highway and engaged in any other types of operations shall wear high-visibility safety apparel”.

NFPA 1901:

Despite this interim ruling, the new 2009 NFPA 1901 standard still requires that all fire and rescue vehicles ordered on or after January 1, 2009, must carry a compliant reflective vest for every occupant, as well as a minimum of five (5) 28-inch high traffic cones with reflective stripes for every vehicle.

Recommendations

We recommend that all workers be **required** to wear high-visibility safety apparel, meeting the new requirements, **within any right-of-way** regardless of whether it is on a Federal-aid highway or not. It is rumored that the next edition of the “*Manual on Uniform Traffic Control Devices*” (MUTCD) is going to include this requirement within all right-of-ways, not just Federal-aid highways. Like most States, South Dakota has adopted the MUTCD and will likely adopt the new edition once it becomes available. Keep in mind that the intent of this law is to protect workers from injury or death so the cost of new high-visibility safety apparel is minimal in comparison.

When purchasing new high-visibility safety apparel, our final recommendations include making sure that any apparel ordered meets the minimum Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled “*American National Standard for High-Visibility Safety Apparel and Headwear* and considering tear-away features to protect workers from getting snagged on structures or equipment.

Replacement of Apparel

When should high-visibility safety apparel be replaced? The American Traffic Safety Services Association (ATSSA) recommends that “high-visibility safety apparel be replaced when it becomes faded, torn, dirty, soiled, worn or defaced, or if it is not visible at 1,000 feet day or night”. The typical service life of high-visibility safety apparel depends on the type of work an individual performs while wearing the apparel. The ATSSA advises that apparel that is “worn on a daily basis has a service life expectancy of approximately 6 months and apparel that is not worn on a daily basis may have a useful service life of up to 3 years”. The best advice that they offer is, “if you think your safety apparel is questionable, you should replace it”.

The FHWA estimates that each year more than 100 workers are killed

and over 20,000 are injured in the highway and street construction industry. Please make sure that your employees are properly protected by providing them with up-to-date high-visibility safety apparel and updating your safety rules to ensure that they are wearing them so none of your employees become one of these statistics.

Conclusion

Remember, this new law is designed to prevent injuries and save the lives of local government employees. Even though the current law only pertains to Federal-aid highways, we strongly recommend that high-visibility safety apparel be provided to all of your employees that work in traffic. It is further recommended that employees be required to wear this apparel whenever they are working in traffic regardless of what type of road they are on. The number of motor vehicle crashes involving distracted drivers continues to increase at an alarming rate. Please do everything possible to protect your employees.

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