

Fact Sheet

Provision of PPE in Labour Hire Arrangements – Host Employer

1. What is PPE?

Personal Protective Equipment or PPE is “anything used or worn by a person to minimise risk to the person’s health and safety”, (NSW *WHS Regulation 2017*, Clause 5).

2. What is suitable PPE

What is “suitable” will depend on a number of factors, such as the specific tasks carried out in the workplace, the hazards/risks in each work environment and control measures available to minimise the risks. Suitable PPE may mean PPE that is suitable for the nature and duration of the work, PPE that is a suitable size and fit for the person or PPE that is clean, hygienic and in good working order. This means that there cannot be an exhaustive list of what is suitable PPE.

3. What are some examples of PPE?

PPE includes but is not limited to:

- hard hats
- earplugs
- gloves
- goggles
- respirators
- sunscreen
- safety harnesses
- safety boots, and
- high-visibility clothing.

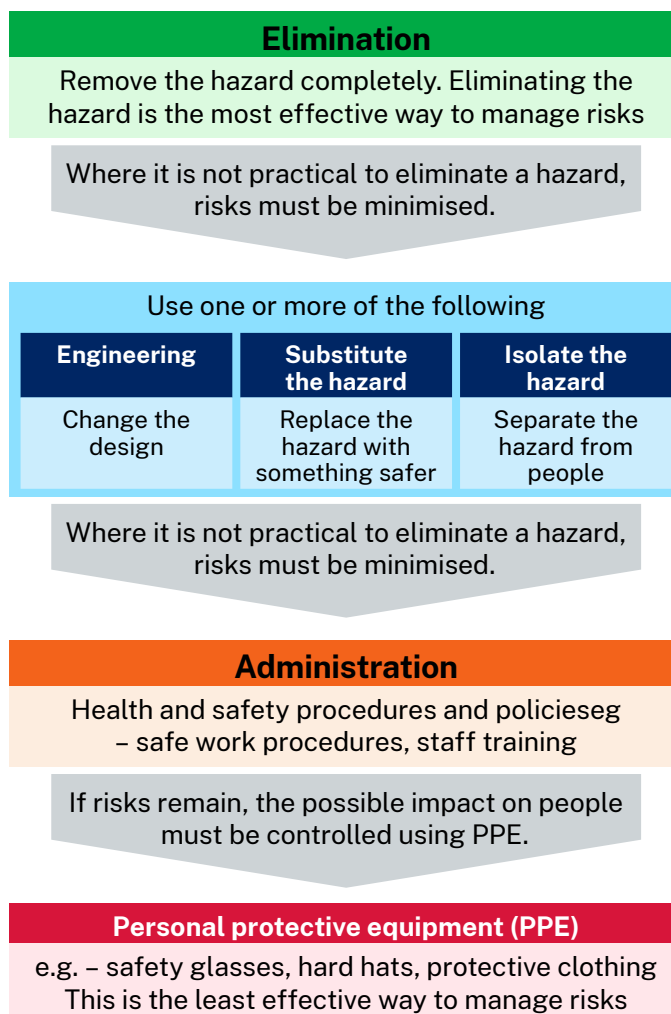
Uniforms, particular items of clothing are not necessarily PPE unless the reason for requiring workers to wear the garment is to minimise workplace risks – e.g., High-visibility vests as part of a Traffic Management Plan.

4. When is PPE used to control WHS risks?

The Regulation (Clause 36(5)) requires a **duty holder** to provide “suitable” PPE to minimise any remaining risks to the health and safety of a worker after the higher order controls within the hierarchy of control framework have been considered and/or applied, as follows.

Control measures

Use the right controls to eliminate or minimise risks and to protect your workers.



5. In a labour hire context who provides the PPE

The Regulation is very specific about who is responsible for supplying the personal protective equipment. The Regulation states that the Person Conducting the Business or Undertaking (PCBU) who directs the carrying out of the work **must** provide the PPE to workers at the workplace, **unless** the PPE has already been provided by another PCBU.

In a labour hire arrangement, where the Host Employer directs the day to day carrying out of the work at the workplace and knows what work is to be done, the Host Employer is responsible for providing the PPE to workers instead of Labour Hire Agency.

The Host Employer must ensure suitable PPE is available at the time when the worker is to commence work even if the Labour Hire Agency has undertaken to supply the worker with some PPE items.

6. When must the PPE be provided?

The PPE must be provided **prior to any work commencing** that requires the use of that PPE.

The Host Employer who provides the PPE must also ensure that the worker is provided with information, training, and instruction on the proper use, wearing, storage and maintenance of PPE (WHS Regulation 2017 cl 44(4)). This training and instruction must be provided prior to the commencement of work that requires the use of that PPE.

7. Are there any circumstances when the labour hire should provide PPE?

Generally, it is the host employer who is the PCBU who directs the carrying out of the work and is required to provide PPE. However, if a labour hire agency was the PCBU that directs the carrying out of the work, then it would be required to provide suitable PPE.

There are also some circumstances where it may be practicable for the Labour Hire Agency to supply the PPE to the worker. For example, where a Labour Hire Agency supplies **workers** for a short **period** of time, it might provide generic PPE such as safety shoes, hard **hats** and high visibility vests.

In such circumstances the Labour Hire Agency could provide the worker with the PPE that is required for the worker to be readily available to work safely at different workplaces for short engagements.

8. Workers must not pay for their PPE?

The legislation is very clear that there are NO circumstances under which a worker should be required to pay for PPE. Therefore, a PCBU, who has a duty to provide PPE must do so at no cost to the worker.

In some circumstances, it may be practicable to have the workers purchase their own PPE (safety shoes for example), but in all such cases, the worker must be reimbursed for the outlay on provision of a tax invoice / receipt. Section 273 of the *WHS Act 2011*.

9. What is the worker's duty in relation to PPE?

If provided with PPE, so far as the worker is reasonably able, the worker must use or wear the PPE in accordance with any information, training or instruction provided by the PCBU (WHS Regulation cl 46).

The worker **must not** intentionally misuse or damage the PPE. If the worker becomes aware of any damage, defect or need to clean or decontaminate any of the PPE, they must advise the PCBU.

If the PPE is uncomfortable or does not fit properly, the worker should consult with their manager.

10. Can PPE be reissued?

Some items of PPE can be re-used and reissued to other workers. It is not unreasonable for the host employer to require the PPE to be handed in when a worker has finished their assignment with the Host Employer.

The Host Employer must ensure that all used PPE is clean and in good condition if it is to be reused. Therefore, the Host Employer should have a process in place to have the PPE inspected, discarded, or repaired and decontaminated if it is to be reused and reissued.

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This publication may contain information about the regulation and enforcement of work health and safety in NSW. It may include some of your obligations under some of the legislation that SafeWork NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website.

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