

08/05/2009 - Whether use of high-visibility warning garments by construction workers in highway work zones is required.

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• **Standard Number:** [1926.200](#); [1926.200\(g\)\(2\)](#); [1926.201](#); [1926.201\(a\)](#)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Letter #20080829-8611

Re: Whether use of high-visibility warning garments by construction workers in highway work zones is required.

We previously wrote to you on May 11, 2004 in response to your question about the use of high-visibility apparel in highway construction work. We stated:

It is well recognized in the construction industry that construction workers in highway/road construction work zones need to be protected from traffic. The MUTCD [*Manual on Uniform Traffic Control Devices*, issued by the Federal Highway Administration] reflects industry practice with respect to identifying the types of situations where these workers need high-visibility warning garments. In such cases section 5(a)(1) requires the use of such garments. Subsequently, the Occupational Safety and Health Review Commission, in *Ruhlin Co.*, (OSHRC No. 04-2049, Nov. 20, 2006), determined that the letter did not provide construction employers with fair notice of a requirement for employees in highway construction work zones to wear high-visibility garments. The Commission interpreted the letter as indicating an Agency view that high visibility garments are only required in those instances identified by the MUTCD with mandatory language (i.e., where the MUTCD states that such garments "must" or "shall" be used).

Since that was not OSHA's view, we are withdrawing our earlier answer to that question, restating the question below, and providing a more comprehensive answer to clarify and expand on OSHA's reasons for concluding that section 5(a)(1) of the Occupational Safety and Health Act requires construction workers in highway/road construction work zones to be protected from road and construction traffic by wearing high-visibility garments.

Question: *Construction employees working on highway/road construction work zones often risk being struck by traffic. Do the OSHA standards require high-visibility apparel for these construction workers?*

Answer: Road and construction traffic poses an obvious and well-recognized hazard to highway/road construction work zone employees. OSHA standards require such employees to wear high visibility garments in two specific circumstances: when they work as flaggers¹ and when they are exposed to public vehicular traffic in the vicinity of excavations². However, other construction workers in highway/road construction work zones are also exposed to the danger of being struck by the vehicles operating near them. For such workers, section 5(a)(1) of the OSH Act, 29 U.S.C. §654(a)(1), also known as the General Duty Clause, requires similar protection³.

The Federal Highway Administration's (FHWA) recent issuance of a final rule (Worker Visibility, 23 CFR Part 634)⁴ demonstrates the need for all workers who are exposed either to public traffic or to construction vehicles and equipment to wear high-visibility apparel⁵. Section 634.3 of the Worker Visibility Rule states:

All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic

(vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

The purpose of this requirement, as stated in section 634.1, is "to decrease the likelihood of worker fatalities or injuries caused by motor vehicles and construction vehicles and equipment...." In the preamble to the Worker Visibility rule (Volume 71 of the Federal Register, page 67792), the FHWA stated:

High visibility is one of the most prominent needs for workers who must perform tasks near moving vehicles or equipment. The need to be seen by those who drive or operate vehicles or equipment is recognized as a critical issue for worker safety. The sooner a worker in or near the path of travel is seen, the more time the operator has to avoid an accident. The FHWA recognized this fact and included language in the 2000 Edition of the Manual on Uniform Traffic Control Devices (MUTCD) to address this issue.

The FHWA's rationale underlying the rule well illustrates that the industry recognizes that construction workers in highway/road construction work zones need protection against the hazard posed by moving traffic. The FHWA's recent mandatory standard for workers on federal-aid highways shows that struck-by hazards in highway/road construction work zones are well recognized by the construction industry. Furthermore, the standard indicates that a feasible means of addressing that hazard is the wearing of high-visibility apparel. Accordingly, high-visibility apparel is required under the General Duty Clause to protect employees exposed to the danger of being struck by public and construction traffic while working in highway/road construction work zones. Typically, workers in a highway/road work zone are exposed to that hazard most of the time.

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