



Department of Labor

Interpretation Letter

Reflective Vests and Public Safety Personnel
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Background

The Department of Labor has received numerous inquiries concerning use of reflective or high visibility clothing by public safety personnel, police officers and fire department personnel. The Indiana Occupational Safety and Health Administration are issuing this interpretation for the benefit of Indiana's public safety community. The Department is not issuing any new rules at this time.

Concurrently, the United States Department of Transportation/Federal Highway Administration issued a new regulation requiring the use of reflective vests on all US funded highways beginning in November 2008. IOSHA does not enforce DOT/FHA rules or regulations. For guidance concerning the Department of Transportation and Federal Highway Administration rules, please see www.fhwa.dot.gov.

Analysis

Under Federal OSHA rules, public safety personnel are generally excluded from regulation. The Indiana OSH Act is different in that it DOES APPLY to all public employers. All state, county, and local government employees, including Indiana State Police, volunteer and paid fire fighters, and police officers are covered by the standards, rules and regulations of the OSH Act in Indiana.

Various police departments in Indiana have been seeking guidance concerning their respective duties to their employees in terms of furnishing and/or requiring the use of reflective vests. It has become apparent that additional guidance is needed for the public employer community concerning public safety officers when they are directing traffic at events such as accidents scenes or assisting in traffic control before, during or after heavily attended events.

This guidance does not apply to "flaggers" in a construction zone. Such flaggers are governed by 29 C.F.R. 1926.200. The OSHA standard found at 29 C.F.R. 1926.201(a) would apply. This specific standard, however, only applies to a construction zone.

Flaggers. Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers shall conform to Part VI of the Manual on Uniform Traffic Control Devices, (1988 Edition, Revision 3 or the Millennium Edition), which are incorporated by reference in §1926.200(g)(2).

In a construction zone, the OSHA standard found above relies upon an underlying consensus standard, ANSI/ISEA 107-2004 and the Manual for Uniform Traffic Control Devices (MUTCD Section 6E.02) for its foundation and specifics. These standards are available in many larger libraries or from the ANSI webpage.

In a construction zone, the employer would conduct a hazard evaluation and determine safe work practices as well as the level of visibility needed for flaggers working near traffic. Appropriate equipment would be provided, site specific procedures developed and enforced by the company.

Where there is no construction zone, but rather an accident scene or the entering or exiting of a large public assembly, the General Duty Clause of the Indiana OSH Act applies. The General Duty Clause states:

Each employer shall establish and maintain conditions of work which are reasonably safe and healthful for employees, and free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.
Indiana Code 22-8-1.1-2

Where a police officer or fire fighter is directing traffic on a public street, road or highway, is on duty, and in or near the lanes of moving traffic, the General Duty Clause applies. The more specific requirements for a flagger in a construction zone cited above do not apply. The General Duty Clause requires employers to control or eliminate known hazards in the workplace that are not covered by a specific standard. In the case of public safety officers directing traffic, IOSHA would rely upon the underlying ANSI/ISEA standards. Those standards are the ANSI/ISEA 107-2004 and the Manual for Uniform Traffic Control Devices under section 6E.02 for guidance.

IOSHA believes that demonstrable hazards exist when an individual is directing traffic around moving vehicles weighing several tons. Clearly, as demonstrated over and over, vehicles kill pedestrians, police officers, and even drivers and passengers within other cars. A hazard clearly exists.

Conclusion

In order to avoid a citation for a public safety official directing traffic who is without reflective gear, the employer must be able to demonstrate that a hazard assessment was performed and that, based upon that analysis, no protective clothing is required. A hazard assessment does not necessarily have to be site or incident specific and could be part of a department's Standard Operating Procedures.

IOSHA believes the rule requires use of reflective high visibility vest irrespective of the time of day or environmental conditions. This applies to those public safety officers that are directing traffic. It is not intended to apply, without further analysis, to first responders rendering aid or assistance at an accident scene, or other public safety personnel on such a scene that are not directing traffic. Of course, anyone working in or around vehicular traffic would be well advised to utilize personal protective equipment, including reflective vests or vests with sleeves and reflective tape. This interpretation is not intended to be a comprehensive statement of liability in that event.

A public safety officer directing traffic on a federally aided/funded highway may very well fall under certain federal Department of Transportation guidelines for vests and visibility. These rules may be more stringent than the interpretation outlined herein by IOSHA. Employers are encouraged to read and become familiar with the federal rules.

For more information or compliance assistance, please contact:

Indiana Department of Labor INSafe at insafe@dol.in.gov or 317-232-2688

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