



VOSH PROGRAM DIRECTIVE: 12-220A

ISSUED: September 1, 1994

**SUBJECT: Exemption for Religious Reasons for Wearing Hard Hats**

**A. Purpose.**

This directive transmits to field personnel Virginia Occupational Safety and Health policy on the subject exemption.

*This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.*

**B. Scope.**

This directive applies to all VOSH personnel.

**C. Action.**

Directors and Supervisors shall assure that field personnel apply the guidelines of this directive when employees object to wearing hard hats in the workplace due to personal religious convictions.

**D. Effective Date.**

September 1, 1994

**E. Expiration Date.**

Not Applicable.

**F. Background.**

On October 30, 1978, OSHA Instruction STD 1-6.3, Exemption from Wearing Hard Hats, was issued to provide an exemption from citations for hard hat violations for employers when their workers, who were members of the Old Order Amish or Sikh Dharma Brotherhood religious communities, failed to wear hard hats due to their personal religious convictions.

On November 5, 1990, OSHA Notice CPL 2 was issued to cancel OSHA Instruction STD 1-6.3. This notice was issued following a 1990 U.S. Supreme Court decision which held the Free Exercise of Religion Clause of the First Amendment of the United States Constitution does not relieve any individual of the obligation to comply with a neutral, generally applicable law, notwithstanding the dictates of the individual's religious practice.

On July 24, 1991, a memorandum from federal OSHA reinstated OSHA's policy concerning the exemption from wearing hard hats, and broadened it to include any employee who, for religious reasons, objected to wearing hard hats in the workplace. The basis for this broadening was due to the Establishment Clause of the First Amendment, which prohibits the Government from giving special preferences to any religious group.

**G. Summary.**

On November 16, 1993, President Clinton signed into law the Religious Freedom Restoration Act of 1993, P.L. 103-141 (RFRA). Under RFRA, federal, state and local governments may not substantially burden a person's exercise of religion unless they demonstrate that application of the burden to the person is to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

**As a result of RFRA, federal OSHA is granting an exemption from citations to employers of employees who, for reasons of personal religious convictions, object to wearing hard hats in the workplace.**

**H. Guidelines.**

1. There shall be no citations or other enforcement actions against employers for violations of hard hat standards when their employees fail to wear hard hats due to personal religious convictions.
2. Citations may be issued to employers of construction workers, with such convictions, for failure to instruct them about overhead hazards, as required by 1926.21(b)(2), as with employers of construction workers without such objections.
3. Employers of non-construction workers, with or without such convictions, should also instruct their workers about such hazards.
4. All instances of an employee's refusal to wear a hard hat, or any other personal protective equipment, due to the employee's personal religious conviction, shall be reported to the Safety Enforcement Director so that such instances of refusal can be monitored.
5. Whenever a citation is being considered because of an employee's refusal to use personal protective equipment (other than a hard hat) due to a personal religious conviction, the Safety Enforcement Director shall be contacted prior to the issuance of the citation.

Theron J. Bell  
Commissioner

e-Attachment: [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=21371&p\\_text\\_version=FALSE](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=21371&p_text_version=FALSE)

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