

## OSHA Directives

### STD 1-6.5 - Exemption for Religious Reason from Wearing Hard Hats.

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- **Record Type:** Instruction
  - **Directive Number:** STD 1-6.5
  - **Subject:** Exemption for Religious Reason from Wearing Hard Hats.
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OSHA Instruction STD 1-6.5

June 20, 1994

Directorate of Compliance Programs

Subject: Exemption for Religious Reasons from Wearing Hard Hats

A. **Purpose.** The purpose of this instruction is to establish Occupational Safety and Health Administration policy on the subject exemption.

B. **Scope.** This instruction applies OSHA-wide.

C. **Cancellations.** This instruction cancels the following:

1. OSHA Instruction STD 1-6.3, January 31, 1978, Exemption from Wearing Hard Hats, Old Order Amish and Sikh Dharma Brotherhood.
2. OSHA Notice CPL 2, November 5, 1990, Cancellation of an OSHA Instruction.
3. Memorandum, July 24, 1991, for All Regional Administrators regarding Exemption from Wearing Hard Hats for Religious Reasons.

D. **Action.** OSHA Regional Administrators shall ensure that field staff apply the guidelines of this instruction when employees object, due to personal religious convictions, to wearing hard hats in the workplace.

E. **Federal Agencies.** This instruction describes a change that affects Federal agencies. Executive Order 12196, Section 1-201, and 29 CFR 1960.16, maintains that Federal agencies must also follow the enforcement policy and procedures contained in this instruction.

F. **Federal Program Change.** This instruction describes a Federal Program Change which affects State Programs. Each Regional Administrator shall:

1. Ensure that this change is forwarded promptly to each State designee, using a format consistent with the Plan Change Two-way Memorandum in Appendix P, OSHA Instruction STP 2.22, CH-3.
2. Explain the content of this change to the State designee, as requested.
3. Advise the State designees that they are encouraged, but are not required, to adopt this change.
4. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing to the Regional Administrator as soon as the State's intention is known, but not later than 70 calendar days after the date of issuance (10 days for mailing and 60 days for response). This acknowledgment must include (if the State decides to adopt the change) a description either of the State's plan to follow the guidelines in paragraph H to implement the change, or alternative guidelines.
5. Review policies instructions and guidelines issued by the State to determine that this change has been communicated to State compliance personnel.

#### **G. Background.**

1. On October 30, 1978, OSHA Instruction STD 1-6.3, Exemption from Wearing Hard Hats, was issued. This instruction superseded Field Information Memorandum #75-11 dated February 4, 1975. The instruction provided 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.
2. On November 5, 1990, OSHA Notice CPL 2, Cancellation of an OSHA Instruction, was issued to cancel OSHA Instruction STD 1-6.3. This notice was issued following the U.S. Supreme Court decision in **Employment Division, Department of Human Resources v. Smith**, 110 S.Ct. 1595 (1990) (the peyote case), 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.
3. On July 24, 1991, a memorandum for All Regional Administrators from the Director of Compliance Programs was issued that withdrew the above November 5, 1990 notice. This memorandum reinstated OSHA's policy concerning the exemption from wearing hard hats, and broadened it to any employee who for religious reasons objected to wearing hard hats in the workplace. This broadening was due to the Establishment Clause of the First Amendment, which prohibits the Government from giving special preferences to any religious group.
4. On November 16, 1993, President Clinton signed into law the Religious Freedom Restoration Act of 1993, P.L. 103-141 (RFRA).

a. RFRA contains findings that laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise, and that governments should not substantially burden religious exercise without compelling justification.

b. RFRA restores the compelling interest test as set forth in **Sherbert v. Verner**, 374 U.S. 398 (1963) and **Wisconsin v. Yoder**, 406 U.S. 205 (1972); guarantees its application in all cases where free exercise of religion is substantially burdened; and provides a claim or defense to persons whose religious exercise is substantially burdened by government.

c. 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 in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

5. OSHA has decided to grant an exemption from citations to employers of employees who, for reasons of personal religious convictions, object to wearing hard hats in the workplace. There may be, however, circumstances in the future that would involve a hard hat hazard sufficiently grave to raise a compelling governmental interest for requiring the wearing of hard hats, notwithstanding employee personal religious convictions.

**H. Effective Date.** This instruction is effective immediately and will remain in effect until canceled or superseded.

**I. Guidelines.** OSHA staff shall adhere to the following guidelines.

a. 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.

b. Citations may be issued to employers of construction workers, with such convictions, for failure to instruct them about overhead hazards, as required by 29 CFR 1926.21(b)(2), as with employers of construction workers without such objections.

c. Employers of non-construction workers, with or without such convictions, should also instruct their workers about such hazards.

d. 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 Regional Office so that such instances of refusal can be monitored.

e. 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 National Office shall be contacted prior to the issuance of the citation.

Joseph A. Dear Assistant Secretary

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