



WHEN ONE SIZE DOESN'T FIT ALL: IS UNCONSCIOUS BIAS IMPACTING YOUR SAFETY RECORD?

Virtually everyone has heard of NASA's all-female spacewalk that didn't actually happen. NASA called off this historic event, because it didn't have two spacesuits to fit both women.¹ In the days following NASA's announcement, many raised questions about how this could have happened; the truth is likely those in charge of preparing suits did not think about the need for smaller suits in a space program that is no longer exclusively male. While most employers aren't going to run into the problem of not having an appropriately sized spacesuit, inadequate personal protective equipment (PPE) for women and other gender-bias related issues can create real safety issues for companies in the mining and construction industries.

As the number of women working in the construction industry has increased, the Occupational Safety and Health Administration (OSHA) is devoting more attention to health and safety issues of particular relevance to women.² Employers who are not aware of these issues, and consequently, fail to ensure the health and safety of the women in their workforces, risk citations from compliance officers who are particularly attuned to these problems. The Mine Safety and Health Administration (MSHA) does not have a specific initiative on safety equipment for women, but mine operators who aren't ensuring properly fitting PPE for all employees could run afoul of a variety of regulations.

Almost all women who have spent any amount of time working in mines, construction sites, or in other areas where

the workforce is predominantly male, share a common experience of being unable to find adequately fitting coveralls, boots, and other PPE. Sadly, due to the difficulty in removing coveralls (and the pounds of equipment stored inside them or attached to them), combined with the lack of sanitary bathroom facilities, women often choose not to drink water during the day to avoid use of jobsite bathrooms. Operators often groan when cited by OSHA or MSHA about bathroom facilities, but the fact is these citations are easy for compliance officers and inspectors to write.³ Maintaining clean, adequate bathroom facilities for both men and women is a good way to avoid unnecessary civil monetary penalties.

Aside from the clear health and safety risks associated with dehydrated employees who don't want to drink for fear they will have to use the restroom, there are a number of other safety hazards employees may experience due to improperly fitting PPE. For example, MSHA requires that miners wear "[p]rotective gloves when handling materials or performing work which might cause injury to the hands; however, gloves shall not be worn when they would create a greater hazard by becoming entangled in the moving parts of equipment."⁴ Women often have smaller hands than men, and a mine that doesn't provide gloves in smaller sizes is asking that miner to choose between handling hazardous materials without protection and risking becoming entangled in machinery.

MSHA's surface coal mine regulations require that miners wear "[s]lug-fitting clothing when working around moving

¹ Matthew S. Schwartz, *NASA Scraps First All-Female Spacewalk for Want of a Medium-Size Spacesuit* (March 26, 2019), <https://www.npr.org/2019/03/26/706779637/nasa-scraps-first-all-female-spacewalk-for-want-of-a-medium-sized-spacesuit>.

² See *Women in Construction*, Occupational Safety and Health Administration, Safety and Health Topics, <https://www.osha.gov/doc/topics/women/index.html>.

³ See 29 CFR § 1926.51; 30 CFR §§ 56.20008, 57.20008, and 75.1712-6.

⁴ 30 CFR § 75.1720.



machinery or equipment.”⁵ A number of MSHA’s fatal accident reports attest to the dangers of entanglements in machinery caused by overly loose clothing. Likewise, the Metal/Non-Metal regulations require “suitable” hard hats and protective footwear.⁶ Women often require smaller hard hats and smaller boots than the average male miner, and an inspector who spots a miner wearing a hard hat that doesn’t quite fit or boots that pose a tripping hazard is likely to deem them unsuitable and in violation of the standards.

OSHA requires that where employees may encounter hazards, PPE be “provided, used, and maintained in a sanitary and reliable condition.”⁷ Further, “[a]ll personal protective equipment shall be of safe design and construction for the work to be performed.”⁸ PPE that poses a risk of entanglement in machinery because it is too big is neither reliable nor of safe design and construction.

A more significant, but sometimes less noticeable, safety concern relates to workplace culture. Women who are made to feel uncomfortable in the workplace, because of gender bias (either conscious or unconscious) are less likely to ask for help and may try to work alone under unsafe circumstances.⁹ This type of environment has the potential of leading to citations from MSHA and OSHA in addition to EEOC claims or charges. For example, MSHA has specific regulations addressing whether a miner should be working alone that may be implicated if a miner is reluctant to request help because she feels uncomfortable or feels like she must prove herself to her male coworkers.¹⁰

Employers must be aware of the changing enforcement landscape concerning gender bias and can take several steps to avoid safety violations specifically arising from gender issues:

- Train employees on appropriate interactions in the workplace and pay attention to workplace interactions to ensure no one is experiencing harassment or being made uncomfortable.
- Encourage employees to ask for help when working on something potentially hazardous.
- Maintain clean, sanitary bathroom facilities in adequate numbers and for both men and women.
- Provide PPE that fits each employee including coveralls, boots, gloves, hardhats, and anything else that might require different sizing.

In addition to ensuring the workplace is safe, these steps also improve morale and help avoid the various lawsuits and charges which arise when employees feel that males and females are treated differently.

If you have any questions about this update, please contact Laura Ilardi Pearson, pearsonl@hallevans.com.



⁵ 30 CFR § 77.1710

⁶ 30 CFR §§ 57.15002 and 15003

⁷ 30 CFR § 1926.95(a) (emphasis added)

⁸ 29 CFR § 1926.95(c); See also General Industry Standard 29 CFR § 1910.132(d)(1)(iii) (requiring that employers “[s]elect PPE that properly fits each affected employee”)

⁹ *Women in the Construction Workplace: Providing Equitable Safety and Health Protection*, Study and Recommendations by the Advisory Committee on Occupational Safety and Health (June 1999), <https://www.osha.gov/doc/acsh/haswicformal.html>.

¹⁰ See, e.g., 30 CFR § 56.18020; 56.9201