

108TH CONGRESS  
2D SESSION

# S. 2371

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 29, 2004

Mr. KENNEDY (for himself, Mr. CORZINE, Mr. DODD, Mr. BINGAMAN, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. EDWARDS, Mrs. CLINTON, Mr. AKAKA, Mr. LAUTENBERG, Mr. ROCKEFELLER, Mr. FEINGOLD, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting America’s  
5 Workers Act”.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, wherever in  
3 this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a section or other provi-  
5 sion, the reference shall be considered to be made to a  
6 section or other provision of the Occupational Safety and  
7 Health Act of 1970 (29 U.S.C. 651 et seq.).

8 **TITLE I—COVERAGE AND**  
9 **APPLICATION OF ACT**

10 **SEC. 101. COVERAGE OF PUBLIC EMPLOYEES.**

11 (a) IN GENERAL.—Section 3(5) (29 U.S.C. 652(5))  
12 is amended by striking “but does not include” and all that  
13 follows and inserting “including the United States, a  
14 State, or a political subdivision of a State.”.

15 (b) CONSTRUCTION.—Nothing in this Act shall be  
16 construed to affect the application of section 18 of the Oc-  
17 cupational Safety and Health Act of 1970 (29 U.S.C.  
18 667).

19 **SEC. 102. APPLICATION OF ACT.**

20 Section 4(b) (29 U.S.C. 653(b)(1)) is amended—

21 (1) by redesignating paragraphs (2), (3), and  
22 (4) as paragraphs (5), (6), and (7), respectively; and

23 (2) by striking paragraph (1) and inserting the  
24 following:

25 “(1) If a Federal agency has promulgated and is en-  
26 forcing a standard or regulation affecting occupational

1 safety or health of some or all of the employees within  
2 that agency's regulatory jurisdiction, and the Secretary  
3 determines that such a standard or regulation as promul-  
4 gated and the manner in which the standard or regulation  
5 is being enforced provides protection to those employees  
6 that is at least as effective as the protection provided to  
7 those employees by this Act and the Secretary's enforce-  
8 ment of this Act, the Secretary may publish a certification  
9 notice in the Federal Register. The notice shall set forth  
10 that determination and the reasons for the determination  
11 and certify that the Secretary has ceded jurisdiction to  
12 that Federal agency with respect to the specified standard  
13 or regulation affecting occupational safety or health. In  
14 determining whether to cede jurisdiction to a Federal  
15 agency, the Secretary shall seek to avoid duplication of,  
16 and conflicts between, health and safety requirements.  
17 Such certification shall remain in effect unless and until  
18 rescinded by the Secretary.

19       “(2) The Secretary shall, by regulation, establish pro-  
20 cedures by which any person who may be adversely af-  
21 fected by a decision of the Secretary certifying that the  
22 Secretary has ceded jurisdiction to another Federal agency  
23 pursuant to paragraph (1) may petition the Secretary to  
24 rescind a certification notice under paragraph (1). Upon  
25 receipt of such a petition, the Secretary shall investigate

1 the matter involved and shall, within 90 days after receipt  
2 of the petition, publish a decision with respect to the peti-  
3 tion in the Federal Register.

4 “(3) Any person who may be adversely affected by—

5 “(A) a decision of the Secretary certifying that  
6 the Secretary has ceded jurisdiction to another Fed-  
7 eral agency pursuant to paragraph (1); or

8 “(B) a decision of the Secretary denying a peti-  
9 tion to rescind such a certification notice under  
10 paragraph (1),

11 may, not later than 60 days after such decision is pub-  
12 lished in the Federal Register, file a petition challenging  
13 such decision with the United States court of appeals for  
14 the circuit in which such person resides or such person  
15 has a principal place of business, for judicial review of  
16 such decision. A copy of the petition shall be forthwith  
17 transmitted by the clerk of the court to the Secretary. The  
18 Secretary’s decision shall be set aside if found to be arbi-  
19 trary, capricious, an abuse of discretion, or otherwise not  
20 in accordance with law.

21 “(4) Nothing in this Act shall apply to working condi-  
22 tions covered by the Federal Mine Safety and Health Act  
23 of 1977 (30 U.S.C. 801 et seq.).”

1 **TITLE II—INCREASING PROTEC-**  
2 **TIONS FOR WHISTLE-**  
3 **BLOWERS**

4 **SEC. 201. EMPLOYEE ACTIONS.**

5 Section 11(c)(1) (29 U.S.C. 660(c)(1)) is amended  
6 by inserting before the period at the end the following:  
7 “, including reporting any injury, illness, or unsafe condi-  
8 tion to the employer, agent of the employer, safety and  
9 health committee involved, or employee safety and health  
10 representative involved”.

11 **SEC. 202. PROHIBITION OF DISCRIMINATION.**

12 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-  
13 ing paragraph (2) and inserting the following:

14 “(2) No person shall discharge or in any manner dis-  
15 criminate against an employee for refusing to perform the  
16 employee’s duties if the employee has a reasonable appre-  
17 hension that performing such duties would result in seri-  
18 ous injury to, or serious impairment of the health of, the  
19 employee or other employees. The circumstances causing  
20 the employee’s apprehension of serious injury or serious  
21 impairment of health shall be of such a nature that a rea-  
22 sonable person, under the circumstances confronting the  
23 employee, would conclude that there is a bona fide danger  
24 of a serious injury, or serious impairment of health, result-  
25 ing from the circumstances. In order to qualify for protec-

1 tion under this paragraph, the employee, when practicable,  
2 shall have sought from the employee's employer, and have  
3 been unable to obtain, a correction of the circumstances  
4 causing the refusal to perform the employee's duties.".

5 **SEC. 203. PROCEDURE.**

6 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-  
7 ing paragraph (3) and inserting the following:

8 "(3) Any employee who believes that the employee  
9 has been discharged, disciplined, or otherwise discrimi-  
10 nated against by any person in violation of paragraph (1)  
11 or (2) may, within 180 days after such alleged violation  
12 occurs, file (or have filed by any person on the employee's  
13 behalf) a complaint with the Secretary alleging that such  
14 discharge or discrimination violates paragraph (1) or (2).  
15 Upon receipt of such a complaint, the Secretary shall no-  
16 tify the person named in the complaint (referred to in this  
17 subsection as the 'respondent') of the filing of the com-  
18 plaint.

19 "(4)(A)(i) Not later than 60 days after the receipt  
20 of a complaint filed under paragraph (3), the Secretary  
21 shall conduct an investigation and determine whether  
22 there is reasonable cause to believe that the complaint has  
23 merit. During the investigation, the Secretary shall notify  
24 the respondent of the charges made in the complaint, and  
25 shall provide such person with an opportunity to meet with

1 the inspector conducting the investigation, to submit a re-  
2 sponse to such charges, and to present witnesses to rebut  
3 such charges. The Secretary shall also consider the result  
4 of any grievance proceeding provided for in a collective  
5 bargaining agreement, that may have been held with re-  
6 spect to such charges. Upon completion of the investiga-  
7 tion, the Secretary shall issue findings and notify the com-  
8 plainant and the respondent of the Secretary's findings.  
9 If the Secretary has concluded that there is reasonable  
10 cause to believe that a violation has occurred, the Sec-  
11 retary's findings shall be accompanied by a preliminary  
12 order providing the relief prescribed by subparagraph (B).

13       “(ii)(I) Not later than 30 days after the Secretary  
14 has issued findings under clause (i), either the respondent  
15 or the complainant may file objections to the findings or  
16 preliminary order, and request a hearing on the record,  
17 except that the filing of such objections shall not operate  
18 to stay any reinstatement remedy contained in the prelimi-  
19 nary order.

20       “(II) If a hearing described in subclause (I) is not  
21 requested in the 30-day period described in such subclause  
22 with respect to a preliminary order, the order shall be  
23 deemed to be a final order and not subject to judicial re-  
24 view.

1       “(iii) If the Secretary does not issue findings under  
2 clause (i) with respect to a complaint within 90 days after  
3 the receipt of the complaint, the complainant may request  
4 a hearing on the record on the complaint.

5       “(iv) The Secretary shall expeditiously conduct a  
6 hearing requested under clause (ii) or (iii). Upon the con-  
7 clusion of such hearing, the Secretary shall issue a final  
8 order within 120 days. Until the issuance of a final order,  
9 such hearing may be terminated at any time on the basis  
10 of a settlement agreement entered into by the Secretary,  
11 the complainant, and the respondent.

12       “(B)(i) If, in response to a complaint filed under  
13 paragraph (3), the Secretary determines that a violation  
14 of paragraph (1) or (2) has occurred, in issuing an order  
15 under subparagraph (A)(iv), the Secretary shall require—

16               “(I) the person who committed such violation to  
17 correct the violation;

18               “(II) such person to reinstate the complainant  
19 to the complainant’s former position together with  
20 the compensation (including backpay), terms, condi-  
21 tions, and privileges of the complainant’s employ-  
22 ment; and

23               “(III) such person to pay compensatory dam-  
24 ages.



1       “(ii) On issuing an order requiring a remedy de-  
2 scribed in clause (i), the Secretary, at the request of the  
3 complainant, may assess against the person against whom  
4 the order is issued a sum equal to the aggregate amount  
5 of all costs and expenses (including attorney’s fees) rea-  
6 sonably incurred, as determined by the Secretary, by the  
7 complainant for, or in connection with a complaint upon  
8 which the order was issued.

9       “(5)(A) Any person adversely affected or aggrieved  
10 by an order issued after a hearing conducted under para-  
11 graph (4)(A) may obtain review of the order in the United  
12 States Court of Appeals for the circuit in which the viola-  
13 tion, with respect to which the order was issued, allegedly  
14 occurred, or the circuit in which such person resided on  
15 the date of such violation. The petition for review shall  
16 be filed within 60 days after the issuance of the Sec-  
17 retary’s order. Such review shall be conducted in accord-  
18 ance with the provisions of chapter 7 of title 5, United  
19 States Code. The court shall conduct the review and issue  
20 a decision expeditiously.

21       “(B) If a person fails to comply with an order issued  
22 under paragraph (4)(A), the Secretary shall file a civil ac-  
23 tion in the United States district court for the district in  
24 which the violation was found to occur in order to enforce  
25 such order. In actions brought under this subparagraph,

1 the district court shall have jurisdiction to grant all appro-  
 2 priate relief, including injunctive relief, reinstatement, and  
 3 compensatory damages.

4 “(6) The legal burdens of proof set forth in section  
 5 1221(e) of title 5, United States Code, shall govern adju-  
 6 dication of violations under this subsection.”.

7 **SEC. 204. RELATION TO ENFORCEMENT.**

8 Section 17(j) (29 U.S.C. 666(j)) is amended by in-  
 9 serting before the period the following: “, including the  
 10 history of violations, under section 11(c)”.

11 **TITLE III—INCREASING**  
 12 **PENALTIES FOR VIOLATORS**

13 **SEC. 301. POSTING OF EMPLOYEE RIGHTS.**

14 Section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended by  
 15 adding at the end the following new sentence: “Such regu-  
 16 lations shall include provisions requiring employers to post  
 17 for employees information on the protections afforded  
 18 under section 11(c).”.

19 **SEC. 302. INVESTIGATIONS OF FATALITIES AND SERIOUS**  
 20 **INCIDENTS.**

21 Section 8 (29 U.S.C. 657) is amended by adding at  
 22 the end the following new subsection:

23 “(i)(1) The Secretary shall investigate any incident  
 24 resulting in death or serious incident, that occurs in a  
 25 place of employment covered by this Act.

1       “(2) If an incident resulting in death or serious inci-  
2 dent occurs in a place of employment covered by this Act,  
3 the employer shall notify the Secretary of the incident in-  
4 volved and shall take appropriate measures to prevent the  
5 destruction or alteration of any evidence that would assist  
6 in investigating the incident. The appropriate measures re-  
7 quired by this paragraph do not prevent an employer from  
8 taking action on a worksite to prevent injury to employees  
9 or substantial damage to property. If an employer takes  
10 such action, the employer shall notify the Secretary of the  
11 action in a timely fashion.

12       “(3) In this subsection:

13           “(A) INCIDENT RESULTING IN DEATH.—The  
14 term ‘incident resulting in death’ means an incident  
15 that results in the death of an employee.

16           “(B) SERIOUS INCIDENT.—The term ‘serious  
17 incident’ means an incident that results in the hos-  
18 pitalization of 2 or more employees.”.

19 **SEC. 303. PROHIBITION ON UNCLASSIFIED CITATIONS.**

20       Section 9 (29 U.S.C. 658) is amended by adding at  
21 the end the following:

22       “(d) The Secretary may not designate a citation  
23 issued under this section as an unclassified citation.”.

1 **SEC. 304. VICTIMS' RIGHTS.**

2 The Act is amended by inserting after section 9 (29  
3 U.S.C. 658) the following:

4 **“SEC. 9A. VICTIM'S RIGHTS.**

5 “(a) DEFINITION.—In this section, the term ‘victim’  
6 means—

7 “(1) an employee who has sustained a work-re-  
8 lated injury or illness that is the subject of an in-  
9 spection or investigation conducted under section 8,  
10 or

11 “(2) a family member of an employee, if—

12 “(A) the employee is killed as a result of  
13 a work-related injury or illness that is the sub-  
14 ject of an inspection or investigation conducted  
15 under section 8; or

16 “(B) the employee sustains a work-related  
17 injury or illness that is the subject of an inspec-  
18 tion or investigation conducted under section 8,  
19 and the employee cannot reasonably exercise  
20 the employee’s rights under this section.

21 “(b) RIGHTS.—On request, a victim shall be afforded  
22 the right, with respect to a work-related injury or illness  
23 (including a death resulting from a work-related injury or  
24 illness) involving an employee, to—

25 “(1) meet with the Secretary, or an authorized  
26 representative of the Secretary, regarding the in-

1       spection or investigation conducted under section 8  
2       concerning the employee’s injury or illness before the  
3       Secretary’s decision to issue a citation or take no ac-  
4       tion; and

5             “(2)(A) receive, at no cost, a copy of any cita-  
6       tion or report, issued as a result of such inspection  
7       or investigation, on the later of the date the citation  
8       or report is issued and the date of the request;

9             “(B) be informed of any notice of contest filed  
10       under section 10; and

11            “(C) be provided an explanation of the rights of  
12       employee and employee representatives to participate  
13       in proceedings conducted under section 10.

14            “(c) MODIFICATION OF CITATION.—Before entering  
15       into an agreement to withdraw or modify a citation issued  
16       as a result of an inspection or investigation of an incident  
17       resulting in death or serious incident under section 8, the  
18       Secretary, on request, shall provide an opportunity to the  
19       victim to appear and make a statement before the parties  
20       conducting settlement negotiations.

21            “(d) NOTIFICATION AND REVIEW.—The Secretary  
22       shall establish procedures—

23             “(1) to inform victims of their rights under this  
24       section; and

1           “(2) for the informal review of any claim of a  
2           denial of such a right.”.

3 **SEC. 305. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

4           The first sentence of section 10(c) (29 U.S.C. 659(c))  
5 is amended—

6           (1) by inserting after “the issuance of a cita-  
7           tion” the following: “(including a modification of a  
8           citation issued)”; and

9           (2) by inserting after “files a notice with the  
10          Secretary alleging” the following: “that the citation  
11          fails properly to designate the violation as serious,  
12          willful, or repeated, that the proposed penalty is not  
13          adequate, or”.

14 **SEC. 306. OBJECTIONS TO MODIFICATION OF CITATIONS.**

15          Section 10 (29 U.S.C. 659) is amended by adding  
16 at the end the following new subsection:

17          “(d)(1) If the Secretary intends to withdraw or to  
18          modify a citation issued under section 9(a) as a result of  
19          any agreement with the cited employer, the Secretary shall  
20          provide (in accordance with rules of procedure prescribed  
21          by the Commission) prompt notice to affected employees  
22          or representatives of affected employees, and that notice  
23          shall include the terms of the proposed agreement.

24          “(2) Not later than 15 working days after the receipt  
25 of a notice provided in accordance with paragraph (1), any

1 employee or representative of employees, regardless of  
2 whether such employee or representative has previously  
3 elected to participate in the proceedings involved, shall  
4 have the right to file a notice with the Secretary alleging  
5 that the proposed agreement fails to effectuate the pur-  
6 poses of this Act and stating the respects in which the  
7 agreement fails to effectuate the purposes.

8       “(3) Upon receipt of a notice filed under paragraph  
9 (2), the Secretary shall consider the statements presented  
10 in the notice, and if the Secretary determines to proceed  
11 with the proposed agreement, the Secretary shall respond  
12 with particularity to the statements presented in the no-  
13 tice.

14       “(4) Not later than 15 working days following the  
15 Secretary’s response provided pursuant to paragraph (3),  
16 the employee or representative of employees shall, on mak-  
17 ing a request to the Commission, be entitled to a hearing  
18 before the Commission as to whether adoption of the pro-  
19 posed agreement would effectuate the purposes of this Act,  
20 including a determination as to whether the proposed  
21 agreement would adequately abate the alleged violations  
22 alleged in the citation.

23       “(5) If the Commission determines that the proposed  
24 agreement fails to effectuate the purposes of this Act, the  
25 proposed agreement shall not be entered as an order of

1 the Commission and the citation shall not be withdrawn  
2 or modified in accordance with the proposed agreement.”.

3 **SEC. 307. CIVIL PENALTIES.**

4 Section 17 (29 U.S.C. 666) is amended—

5 (1) in subsection (a)—

6 (A) by striking “\$70,000” and inserting  
7 “\$100,000”;

8 (B) by striking “\$5,000” and inserting  
9 “\$7,000”; and

10 (C) by adding at the end the following: “If  
11 such a violation causes the death of an em-  
12 ployee, such civil penalty amounts shall be in-  
13 creased to not more than \$250,000 for such  
14 violation, but not less than \$50,000 for such  
15 violation.”;

16 (2) in subsection (b)—

17 (A) by striking “\$7,000” and inserting  
18 “\$10,000”; and

19 (B) by adding at the end the following: “If  
20 such a violation causes the death of an em-  
21 ployee, such civil penalty amounts shall be in-  
22 creased to not more than \$50,000 for such vio-  
23 lation, but not less than \$20,000 for such viola-  
24 tion.”;

25 (3) in subsection (c)—



1 (A) by striking “\$7,000” and inserting  
2 “\$10,000”; and

3 (B) by adding at the end the following: “If  
4 such a violation causes the death of an em-  
5 ployee, such civil penalty amounts shall be in-  
6 creased to not more than \$50,000 for such vio-  
7 lation, but not less than \$20,000 for such viola-  
8 tion.”;

9 (4) in subsection (d)—

10 (A) by striking “\$7,000” and inserting  
11 “\$10,000”; and

12 (B) by adding at the end the following: “If  
13 such a violation causes the death of an em-  
14 ployee, such civil penalty amounts shall be in-  
15 creased to not more than \$50,000 for such vio-  
16 lation, but not less than \$20,000 for such viola-  
17 tion.”; and

18 (5) in subsection (i), by striking “\$7,000” and  
19 inserting “\$10,000”.

20 **SEC. 308. OSHA CRIMINAL PENALTIES.**

21 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as  
22 amended by section 307) is further amended—

23 (1) in subsection (e)—

24 (A) by striking “fine of not more than  
25 \$10,000” and inserting “fine in accordance

1 with section 3571 of title 18, United States  
2 Code,”;

3 (B) by striking “six months” and inserting  
4 “10 years”;

5 (C) by inserting “under this subsection or  
6 subsection (i)” after “first conviction of such  
7 person”;

8 (D) by striking “fine of not more than  
9 \$20,000” and inserting “fine in accordance  
10 with section 3571 of title 18, United States  
11 Code,”; and

12 (E) by striking “one year” and inserting  
13 “20 years”;

14 (2) in subsection (f), by striking “fine of not  
15 more than \$1,000 or by imprisonment for not more  
16 than six months,” and inserting “fine in accordance  
17 with section 3571 of title 18, United States Code, or  
18 by imprisonment for not more than 2 years,”;

19 (3) in subsection (g), by striking “fine of not  
20 more than \$10,000, or by imprisonment for not  
21 more than six months,” and inserting “fine in ac-  
22 cordance with section 3571 of title 18, United States  
23 Code, or by imprisonment for not more than 1  
24 year,”;

1           (4) by redesignating subsections (i) through (l)  
2           as subsections (j) through (m), respectively; and

3           (5) by inserting after subsection (h) the fol-  
4           lowing:

5           “(i) Any employer who willfully violates any standard,  
6           rule, or order promulgated pursuant to section 6, or any  
7           regulation prescribed pursuant to this Act, and that viola-  
8           tion causes serious bodily injury to any employee but does  
9           not cause death to any employee, shall, upon conviction,  
10          be punished by a fine in accordance with section 3571 of  
11          title 18, United States Code, or by imprisonment for not  
12          more than 5 years, or by both, except that if the conviction  
13          is for a violation committed after a first conviction of such  
14          person under this subsection or subsection (e), punishment  
15          shall be by a fine in accordance with section 3571 of title  
16          18, United States Code, or by imprisonment for not more  
17          than 10 years, or by both.”.

18          (b) DEFINITION.—Section 3 (29 U.S.C. 652) is  
19          amended by adding at the end the following:

20                 “(15) The term ‘serious bodily injury’ means  
21                 bodily injury that involves—

22                         “(A) a substantial risk of death;

23                         “(B) protracted unconsciousness;

24                         “(C) protracted and obvious physical dis-  
25                 figurement; or

1                   “(D) protracted loss or impairment, of the  
2                   function of a bodily member, organ, or mental  
3                   faculty.”.

4           (c) JURISDICTION FOR PROSECUTION UNDER STATE  
5 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.  
6 666) (as amended by subsection (a)) is further amended  
7 by adding at the end the following:

8           “(o) Nothing in this Act shall preclude a State or  
9 local law enforcement agency from conducting criminal  
10 prosecutions in accordance with the laws of such State or  
11 locality.”.

12          (d) INFLATION ADJUSTMENT.—Section 17 (29  
13 U.S.C. 666) (as amended by subsection (c)) is further  
14 amended by adding at the end the following:

15          “(p) Amounts provided under this section for civil  
16 penalties shall be adjusted by the Secretary at least once  
17 during each 4-year period to account for the percentage  
18 increase or decrease in the Consumer Price Index for all  
19 urban consumers during such period.”.

1 **TITLE IV—REQUIRING EMPLOY-**  
2 **ERS TO PROVIDE AND PAY**  
3 **FOR [PERSONAL] PROTEC-**  
4 **TIVE EQUIPMENT**

5 **SEC. 401. REQUIREMENT.**

6 Section 6(b) (29 U.S.C. 655(b)), as amended by sec-  
7 tion 102(b), is further amended by adding at the end the  
8 following:

9 “(10)(A) In this paragraph, the term ‘personal pro-  
10 tective equipment’ means personal protective equipment as  
11 such term is defined for purposes of section 1910.132(a)  
12 of title 29, Code of Federal Regulations (or any cor-  
13 responding similar regulation or ruling).

14 “(B)(i) Not later than 30 days after the date of en-  
15 actment of the Protecting America’s Workers Act, the  
16 Secretary shall amend section 1910.132(a) of title 29,  
17 Code of Federal Regulations, to provide that protective  
18 equipment shall be provided at no cost to the employee.

19 “(ii) In promulgating any standard under this section  
20 that requires protective equipment, the Secretary shall  
21 specify that the protective equipment shall be provided at  
22 no cost to the employee.”.

○