RE: OSHA ERGONOMICS PROGRAM; FINAL RULE
by: Frederick M. Switzer, III


The purpose of the Standard is to reduce the number and severity of musculoskeletal disorders (MSD’s) caused by exposure to risk factors (awkward posture, contact stress, force, repetition and vibration) in the workplace. MSD’s are injuries and disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. Examples include carpal tunnel syndrome, tendinitis, sciatica, herniated disc and low back pain. The Standard does not address injuries caused by slips, trips, falls, vehicle accidents or similar accidents.

The Standard covers all U.S. general industry employers with the following exceptions: It does not apply to employment covered by OSHA’s Construction, Maritime or Agricultural Standards, office management and support services directly related to that employment, or to railroad operations or office management and support services directly related to the operation of a railroad.

It is estimated that the Standard covers some six million workplaces and more than one hundred million workers. The hospital, restaurant, grocery, trucking and courier industries will need to make the most changes in the workplace. The Standard also targets workers who sit in front of a computer screen all day typing and using a mouse.

Effective October 14, 2001, covered employers must provide basic information to their employees about MSD’s, their signs and symptoms and how to report them. Appendix A and Appendix B to the Standard can be distributed to employees and posted to comply with this requirement. No other action is required by a covered employer until an employee reports an MSD or a sign or symptom of an MSD. The employer must then, within specified time periods, determine whether the reported MSD or MSD sign or symptom qualifies as an “MSD INCIDENT”. If it does, then the employer must determine whether that employee’s job meets the “ACTION TRIGGER”. If it does, the full remedial requirements of the Standard kick in. For that employee’s job and all jobs in the establishment that are the same as that job, the employer must either comply with a “QUICK FIX OPTION” or develop and implement an ergonomics program that includes: (1) Management leadership, (2) Employee participation, (3) MSD management, (4) Job hazard analysis, (5) Hazard reduction and control measures, and evaluations if the job hazard analysis determines that the job presents an “MSD HAZARD” and (6) Training, all within the time limits and procedures specified in the Standard.

The foregoing overview may create the impression that the OSHA program is relatively straightforward and simple. Do not be misguided. The devil is in the details. While the Standard is set out in 22 pages of text, the Standard together with its Preamble (explanatory text) takes up 608 pages of the Federal Register. It can be accessed at http://www.osha-slc.gov/ergonomics-standard/.
The new Standard has been severely criticized as:

- Ill-advised in view of the lack of scientific and medical consensus on the causes of and remedies for MSD.
- Overly broad reach.
- Unduly expensive and burdensome.
- Unconstitutionally vague: key terms and obligations so vague that employers will not know what is necessary for compliance.
- Creates conflicts with established and proven beneficial policies: safety incentive systems and workplace drug testing policies.

There was strong opposition in both the House and Senate to the final OSHA action on ergonomics in FY2001. The final Standard was published in the midst of this controversy during the final days of the Clinton Administration so that it took effect on January 16, 2001, a few days before President Bush took office (reminder: employers need not comply until October 14, 2001). Senator Christopher (Kit) Bond, Chairman of the Senate Committee on Small Business and influential business groups have severely criticized the Standard, while Senator Edward “Ted” Kennedy and the AFL-CIO strongly support it.

A coalition of business groups, including the National Association of Manufacturers, the U.S. Chamber of Commerce and the Society of Human Resource Management have filed a total of 31 lawsuits to block the Standard. These suits contend that the Standard is unconstitutionally vague, and that it violates the Occupational Safety and Health Act because there is no scientific basis for the Standard. Specifically, substantial questions remain concerning the degree of “significant risk” of material impairment of health or functional capacity posed by the “risk factors” identified in the Standard, and the degree to which the Standard would eliminate any such established significant risk.

Beside the legal challenges, there is a possibility that the Standard could be disapproved under the Congressional Review Act of 1996. In that event, the Standard would be rendered null and void.

Despite the current uncertainty created by legal challenges and the possibility of nullification by Congressional action, employers are well advised to become familiar with the Standard and prepare for its implementation in their establishments no later than October 14, 2001. Adequate planning for implementation will require considerable time and attention, especially for those employers who have not established ergonomic programs. Employers who fail to do so will run the risk of citations, fines and enforcement litigation.

If you have any questions about the OSHA Ergonomics Program Standard or require assistance in implementing the Standard, call Fred Switzer at Danna McKitrick, P.C. (314) 726-1000

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