

New rule targets workplace injuries

A new federal labor standard seeks to reduce back, hand and other injuries among millions of American workers, whether they bag groceries, cut chicken or type in offices. Unless opponents overturn the rule, employers must comply with it or with state versions of it by October.

BY DAVE SCOTT

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A broad new standard aimed at protecting Americans from work-related musculoskeletal disorders took effect Jan. 16. The federal Occupational Safety and Health Administration's ergonomic standard affects 6.1 million employers and more than 100 million employees in offices, warehouses, factories, poultry plants and other industries.

The rule seeks to reduce work-related musculoskeletal disorders such as carpal-tunnel syndrome, tendonitis and back injuries. Of the 1.8 million injuries reported, about 600,000 result in lost productivity. These injuries are attributed to a variety of causes, including repetitive motion, force, awkward postures, vibration and lifting objects.

Ergonomics has been discussed for 20 years, and the federal OSHA held public hearings for the past two years that resulted in more than 11,000 exhibits, 18,000 pages of transcript and 700 witness presentations. Despite this, states are not fully satisfied with the federal approach and are considering developing their own plans. Currently, 26 "state-plan states" administer their own occupational safety and health programs using state standards. Under the federal occupational safety and health law, states with their own plans must adopt ergonomic standards that are as effective as the federal standard within six months of the adoption of a federal



standard to continue receiving federal funding.

Some members of Congress and industry groups who oppose the rule have argued that it should not be implemented until the science of ergonomics is clearer. The U.S. Chamber of Commerce and the National Association of Manufacturers have filed lawsuits against the federal standard. Should the standard withstand all challenges in court and by Congress, and if the new administration does not act to prevent implementation, employers must comply by Oct. 14.

The federal standard

Under the federal rule, employers initially must inform employees of common musculoskeletal disorders, explain how to report a work-related injury and emphasize quick reporting.

Once an injury is reported, the employ-

er must act to protect other employees who perform similar activities. If an employer's quick fix is not effective, the employer must develop a substantial and effective ergonomic program.

This requirement for a substantial ergonomic program is probably the most expensive and controversial part of the federal standard. The standard requires management and employee participation in the development of the plan, job-hazard analysis and control, training and follow-up training, musculoskeletal-disorder management, regular program evaluation and record keeping. Employees forced off their jobs because of work-related injuries must receive at least 90 percent of pay and 100 percent of benefits for up to 90 days. Employers with written and effective plans already in force will be "grandfathered."

Meanwhile, some states already are addressing ergonomic injuries, which represent a large number of their reported work-related injuries.

Washington prepares its program

The Washington state Department of Labor and Industry adopted its own ergonomic rule in May 2000. Gary Moore, the department's director, said 50,000 workers in the state suffer musculoskeletal disorders each year, costing employers more than \$411 million a year. Ergonomic injuries represent one-third of workers' compensation claims, he said.

The Washington rule differs from the federal rule in some significant ways:

- The state rule requires employers to identify and improve hazardous jobs before injuries occur, while the federal rule requires employers to take action after an injury occurs;
- The state rule applies to all industries, while the federal rule does not

apply to agricultural, construction or maritime jobs;

- The state rule does not address medical management of injuries, while the federal rule does; and
- The state rule does not include provisions for replacing injured workers' wages while the federal rule does.

The Washington ergonomic standard requires employers to find and fix ergonomic hazards in their workplaces. It does not change the state workers' compensation system, and it does not penalize employers for workers who suffer ergonomic injuries. Thus, in addition to increased productivity and improved work quality, the employer will benefit from a decrease in ergonomic claims, resulting in lower worker-compensation insurance premiums.

The state estimates the cost to businesses will be about \$80 million a year, while the estimated benefits to employers from reducing ergonomic hazards will be \$340 million a year.

The rule will be phased in over the next two to six years, and before it is enforced the department will work with employers and employees in demonstration projects. These projects will work on developing best practices,

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compliance guidelines and inspection policies. Employers who agree to participate in voluntary demonstration projects will receive financial incentives, such as decreases in workers' compensation premiums.

Also before the rule is enforced, under the direction of Gov. Gary Locke, the state will establish a panel of independent experts to make sure the rule require-



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ments are clear and the enforcement policies are fair and consistent. “We will not enforce the rule until this panel has helped us determine that effective educational materials are widely available and demonstration projects are successful,” Moore said.

Finally, the state will provide comprehensive technical assistance and training for employers, especially small businesses.

Michigan’s unique approach

Michigan has taken a public-private approach to addressing repetitive-motion injuries. Michigan Department of Labor Deputy Director Kalmin Smith in a recent statement called the federal ergonomic program unnecessary and divisive.

Michigan’s efforts began three de-

cadecades ago when the state Occupational Safety and Health Administration began providing workers and employers with assistance in resolving repetitive-motion injuries. Two decades ago, the state established an ergonomic standing committee charged with decreasing ergonomic injuries in the state. In addition, in 1980 the state developed a grant program to encourage private solutions to ergonomic problems. Under the program, nonprofit organizations compete for funding by submitting education and training programs aimed at significant occupational safety and health issues. Among this year’s grants for education and training to eliminate or reduce ergonomically related injuries were programs by the United Autoworkers and the University of Michigan Center for Ergonomics.

From 1992-98, while private-industry

employment in Michigan increased by 15 percent, the number of ergonomic injures has decreased by 25 percent.

North Carolina standard halted

Recently retired state Labor Commissioner Harry Payne announced in November that the state would adopt, verbatim, the federal rule. As one of the 26 “state-plan states,” North Carolina is required to adopt a standard within six months of federal OSHA’s implementation.

According to Payne, 70 percent of illnesses and 37 percent of injuries in North Carolina workplaces are the result of musculoskeletal disorders.

The original state standard the Labor Department developed in 1998 at first was held up by the state Rules Review Commission and currently is the subject of a lawsuit by the state Labor Department against the Commission.

The proposed North Carolina standard would have applied to all employers. Those with more than 10 employees would have had to provide training in identifying, reducing and promptly reporting work-related musculoskeletal problems. Employers with 10 or fewer employees would only need to provide written materials to employees.

While requiring employers to reduce or eliminate exposure to musculoskeletal disorders, the proposed standard also provided a “safe harbor” with protection from penalties for employers who develop and implement genuine ergonomic programs. Additionally, employers correcting deficiencies found during an enforcement inspection would not be cited. Also, the state Occupational Safety and Health office would help small employers with 10 or fewer employees design an ergonomics plan. Due to the lawsuit, however, many of these provisions will not be implemented because they are not part of the federal rule as currently written.

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Resources

More information on the federal standard is available on the Web page of the Washington, D.C., office of The Council of State Governments at http://www.statesnews.org/New_Regions/dc_office/index.html. Legislators also may contact organizations such as the National Association of Government Labor Officials (www.naglo.org) and the Occupational Safety and Health State Plan Association.

that I will die from exhaustion before she does, and who will care for her then?"

• An adult daughter in Milwaukee, Wis., said, "I've been caring for Mom for seven years . . . In that time, I have had one vacation for three days."

• A man in Cleveland caring for his 84-year-old mother said, "Taking care of my mother is a 28-hour-a-day job. I've almost reached the end of my rope. I went five years without a vacation or even a day off; there were times I just wanted to walk out the door and never come back."

These are just three voices of hundreds that we heard. The unanimous, resounding message was: Families need help.

As the former assistant secretary for aging, I am pleased that we can assure

families that we heard their voices and understood their message. The National Family Caregiver Support Program is Public Law Number 106-501 and is in the process of being implemented.

There were many who through their tireless efforts helped make the program a reality. Key supporters in the U.S. Senate in addition to Jeffords and Kennedy included Mike DeWine, R-Ohio, and Barbara Mikulski, D-Md., Charles Grassley, R-Iowa, and John Breaux, D-La. Supporters in the U.S. House were led by Reps. Bill Goodling, R-Pa., Howard McKeon, R-Calif., William Clay, D-Mo., and Matthew Martinez, R-Calif., along with the members of the Education and the Workforce Committee's Subcommittee on Post Secondary Education Training and Lifelong Learning. Members of both the House and Senate Ap-

ropriations committees fully funded the act, thanks to the efforts of Sens. Arlen Specter, R-Pa., and Tom Harkin, D-Iowa, and Reps. John Porter, R-Ill., and David Obey, D-Wis.

"This particular program alone will enhance the quality of life for frail individuals and those who care for them, plus save taxpayer money in the long run by preventing and/or delaying a senior's admittance into a nursing home," said McKeon.

The National Family Caregiver Support Program will save taxpayers' money. The kind of informal care that family members provide would cost \$45 billion to \$75 billion a year. It is time we give something back. The beauty of the program is that we can provide what caregivers need most — information, training, support and respite. ★

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California acts early

California tackled ergonomics on the job years ago. As early as 1993, the California Legislature passed a law requiring the development of a standard designed to "minimize instances of injury from repetitive motion."

The state's ergonomic regulation took effect July 3, 1997, but a state court later invalidated various segments of the standard. After appeals, a final standard was implemented nearly three years later which applies to all employers.

The standard is triggered only when at least two employees performing identical tasks are diagnosed with repetitive-motion injuries within 12 consecutive months. If this occurs, the employer must establish and implement a program designed to minimize the condition.

In 1999, despite the nearly three years of legal disputes, the California Legislature reaffirmed its concern with the prevalence of repetitive-motion injuries. In light of this concern and provisions in the state Labor Code on

minimizing such injuries, the state likely will consider implementing the recently adopted federal standard in 2001. However, since the California standard covers all industries and the federal standard does not, the state might not be willing to scrap its current standard.

Federal outlook

During the recent debate in Washington over the Labor Department's budget, some raised the possibility that the new George W. Bush administration would work with the 107th Congress to overturn the federal ergonomic rule. However, because that process would be very complicated, development and implementation of a federal ergonomic standard is likely to be a subject of interest in every state for the immediate future.

Vermont Commissioner of Labor and Industries Tasha Wallis said, "It is likely that the state-plan states will review both the federal ergonomic rule and any state ergonomic standard and

adopt a standard that works best for their particular state. This is how we plan to proceed in Vermont."

Wallis is the president of the National Association of Government Labor Officials — a national organization affiliated with The Council of State Governments and comprised of the directors of each state's Labor Department. "Most of the OSHA state-plan programs are run within the state department of labor. A fair number of these departments are also responsible for workers' compensation programs. It will be an administrative challenge to reconcile the wage-replacement provisions of the ergonomics standard with existing workers' compensation law," she said.

Because there is more than one approach to this issue, it will be interesting to see whether states with their own plans under OSHA opt for the federal standard or whether they borrow pieces of existing state-developed plans to fit their own specific needs and constituencies. ★