

# Ergonomics Regulation Still in Limbo

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## The business community fought against establishing a standard—but some experts still cite its necessity.

Last year, both houses of Congress voted to rescind the U.S. Occupational Safety and Health Administration's (OSHA) ergonomics workplace safety regulation. The regulation had been a bitter source of contention between OSHA and large employers for many years.

First proposed a decade ago by then-Secretary of Labor Elizabeth Dole, the regulation went into effect in January 2001. Its repeal marks the first successful use of the Congressional Review Act (CRA) of 1996, which required federal agencies to send all final regulations to Congress for review. If Congress doesn't like a regulation, it can issue a "joint resolution of disapproval" that cancels the regulation. The CRA also bars OSHA from publishing a similar version of such regulations.

Congress voted to rescind the regulation only two months after it went into effect. The motion was approved and signed into acceptance in March by George W. Bush.

The purpose of OSHA's ergonomics program standard was to reduce the number and severity of musculoskeletal disorders (MSDs) caused by risk factors in the workplace and minimize workers' exposure to repetitive motion activities. MSDs are conditions that involve the nerves, tendons, muscles, and supporting structures of the body. OSHA targeted baking, sewing, meat-packing, and package-handling industries, but the standard was to apply to any employer who had a recorded MSD in its workplace. The OSHA standard would have affected approximately 6.1 million employers and 102 million employees in general industry workplaces.

OSHA wanted to reduce the injuries associated with such things as typing on a computer keyboard all day or repeatedly pushing or pulling heavy boxes. This standard did not apply to injuries caused by slips, trips, falls, vehicle accidents, or

similar accidents that might occur in the workplace.

### An End to Injuries?

In printed materials accompanying the announcement of the new standard, OSHA noted that each year, 1.8 million workers



in the United States report MSDs such as carpal tunnel syndrome, tendonitis, and back injuries. About 600,000 are serious enough to result in workers having to take time off work to recover. The solution, said OSHA, lay in ergonomics—literally, fitting the job to the worker through an office environment or equipment adjustable to a person's size or range of motion.

But not everyone agreed. Those opposed to the ergonomics standard said it was fundamentally flawed and virtually impossible for employers of all sizes to meet. Opponents argued that many small business owners would likely be pushed out of business because of the costs of compliance with the finalized standard. Cost was at the heart of the dispute.

The final regulation was said to place unwarranted compliance burdens on employers and to have unrealistic goals that conflicted with the National Labor Relations Act, the Family and Medical Leave

Act, the Americans with Disabilities Act, and state workers' compensation laws. The Society for Human Resource Management (SHRM), the leading organization of HR professionals, expressed concern that the standard was based on inadequate science and would cost much more than the projections made by the U.S. Department of Labor. OSHA estimated that the finalized standard would cost \$4.8 billion during the first year of implementation, compared with industry estimates that ranged from \$90–100 billion a year.

SHRM, echoing the view of industry groups including the U.S. Chamber of Commerce, said that while employers should be leaders in promoting a safe and healthy workplace and support legislation that can have a direct impact in the reduction of workplace accidents and illnesses, the OSHA regulation was flawed and would impair employer-employee operations, impose costly paperwork burdens, place unnecessarily high costs on employers, and increase litigation. Indeed, the OSHA regulation did give workers with MSDs that originated in the workplace certain rights such as paid time off and medical care.

The business community was concerned about the possibility that they would end up paying workers to take time off after they injured themselves as a result of off-the-job activities. For example, what if a worker who is an avid knitter (off the job) and is employed as a typist develops an MSD? The business community was concerned that in such a situation, the employer would probably end up "footing the bill" (as called for in the OSHA regulations) for this worker's repetitive stress injury.

### Opposition and Options

OSHA was urged to provide guidance—but not mandatory regulations—to employers about the virtues of ergonomics and safety and health programs without excessive government interference. Programs such as the Safety and Health Achievement Recognition Program, the Voluntary Protection Program, state workers' compensation programs, third-party consultation

services, and OSHA's consultation program were cited as examples of nonregulatory approaches to better, safer workplaces. The OSHA regulation would have required employers with manufacturing and manual handling jobs to implement a basic ergonomics program that would include assigning someone to be responsible for ergonomics and setting up a way for employees to report signs and symptoms of MSDs. Having employees train other

employees about how to avoid MSDs was also part of the scheme, as was providing medical care to employees with MSDs acquired on the job.

The business community was overwhelmingly opposed to any occupational safety and health legislation that it felt might create an adversarial environment in the workplace between employers and employees without addressing real improvements to workplace safety. Such legisla-

tion, the business community argued, would only place an unnecessary and costly administrative burden on employers and OSHA.

Over the past several years, Congress has tried, with some success, to limit OSHA's ability to issue an ergonomics standard. In 1997, Congress prohibited OSHA from publishing a final regulation. In 1998, Congress was successful in passing legislation requiring a National Academy of Sciences study on the feasibility of an ergonomics standard. However, OSHA was allowed to proceed with rulemaking in the waning days of the Clinton administration, although the completion of the study was not expected until January 2001.

### Extent of MSDs

There is little argument about whether workers suffer from MSDs. The argument is over how to best prevent this problem. The only routinely collected national source of information about occupational injuries and illnesses is the Annual Survey of Occupational Injuries and Illnesses conducted by the Bureau of Labor Statistics (BLS) of the U.S. Department of Labor. The survey, which BLS has conducted for the past 25 years, is a random sample of about 250,000 private-sector establishments and provides estimates of workplace injuries and illnesses on the basis of information provided by employers from their OSHA Form 200 log of recordable injuries and illnesses. For cases involving days away from work, BLS reports that in 2000, approximately 705,800 cases (32%) were the result of overexertion or repetitive motion.

Specifically, there were

- 367,424 injuries due to overexertion in lifting (65% affected the back); 93,325 injuries due to overexertion in pushing or pulling objects (52% affected the back); 68,992 injuries due to overexertion in holding, carrying, or turning objects (58% affected the back).
- 83,483 injuries or illnesses in other and unspecified overexertion events.
- 92,576 injuries or illnesses due to repetitive motion, including typing or key entry, repetitive use of tools, and repetitive placing, grasping, or moving of objects other than tools. Of these injuries or illnesses, 55% affected the wrist, 7% affected the shoulder, and 6% affected the back.

Data from 1992 to 1995 indicate that injuries and illnesses requiring days away from work declined 19% for overexertion and 14% for repetitive motion over this

three-year period. The incidence rate of overexertion (in lifting) declined from 52.1 per 10,000 workers in 1992 to 41.1 in 1995; the incidence rate for repetitive motion disorders declined from 11.8 per 10,000 workers in 1992 to 10.1 in 1995. These declines are similar to those seen for cases involving days away from work from all causes of injury and illness.

The reasons for these declines are unclear, but the business community argues that fewer disorders could be occurring because of intensive efforts to prevent them and prevention and treatment programs that have reduced days away from work.

Where do we go from here? Among those talking on Capitol Hill about new ergonomics regulations are conservative Republicans who strongly opposed the Clinton-era regulations tossed out by Congress months before they ever took effect. Although it's sure to take some time before new regulations are in place, Sen. John Breaux (D-LA), for example, has already recommended a plan that would not overlap with state workers' compensation laws, as some believed the OSHA regulation did.

Meanwhile, experts and employers that

have implemented successful workplace programs say what's important is to keep the protections coming, no matter what the regulators require. For its part, the American Industrial Hygiene Association encouraged Secretary of Labor Elaine Chao in a recent letter from its president, Steven P. Levine, to take the helm in finding a new, workable approach to an ergonomics standard involving all stakeholders in the process, "not just those representing industry and labor." Reiterating program benefits like reductions in frequency and severity of accidents and increases in productivity, the group said it remains convinced of the need for a standard.

#### **Suggested Reading**

American Industrial Hygiene Association; [www.aiha.org](http://www.aiha.org).  
OSHA's ergonomics webpage; [www.osha.gov/ergonomics/index.html](http://www.osha.gov/ergonomics/index.html).

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