management matters

OSHA'S Ergonomics Standard

By Jonathan A. Wexler, Esq.

On Nov. 14, 2000, the Occupational Safety and Health Administration (OSHA) finalized its Ergonomics Program Standard (the standard). The goal of the standard is to reduce the number and severity of employment-related musculoskeletal disorders (MSDs). Although the standard became effective on Jan. 16, 2001, employers covered by the standard need only provide basic information to employees about MSDs—including 1) their signs, symptoms, and causes, 2) to whom to report them, and 3) a summary of the basic provisions of the standard—before Oct. 15, 2001.

Employers Must Act When an Employee Reports an MSD

Employers that did not have an ergonomics program in place as of Nov. 14, 2000, are required to receive and respond to employee reports of MSD symptoms beginning Oct. 15, 2001. Upon receipt of an employee report, the employer is required first to determine whether the report constitutes a work-related "MSD incident." If not, the employer need not take further action. However, if the employee report does constitute an MSD incident, the employer must, within seven days after the employee's report, determine whether the employee's job meets the standard's "action trigger." A job meets the action trigger if it involves exposure to one or more of the five risk factors: repetition, force, awkward postures, contact stress, or vibration. If the employer determines that the job meets the action trigger, it has two options: develop a complete ergonomics program for that job or implement a "quick fix," if the employer qualifies.

The Elements of an Ergonomics Program

A complete ergonomics program has the following seven elements:

- *Management leadership.* Employers must assign responsibilities and allocate resources for setting up and managing the ergonomics program and ensure that policies and practices encourage employee participation in the program as well as the early reporting of MSD signs, symptoms, and hazards. Management leadership must be initiated within 30 days after the employer determines that a job meets the action trigger.
- *Employee participation.* The employer is required to ensure that basic information set forth in the standard is transmitted to employees and that the program contains procedures for receipt of employee reports, management responses, and employee involvement in development, implementation, and evaluation of the program. Employee participation must also be initiated within 30 days after the employer determines that a job meets the action trigger.
- *Job hazard analysis.* Within 60 days after determining that a job meets the action trigger, the employer is required to perform a job hazard analysis. Such an analysis involves talking with a representative sample of employees in the job, observing the job to identify risk factors, and evaluating the risk factors to determine whether they pose a hazard to employees in that job.
- *Hazard reduction and control.* Once a job hazard analysis has been performed, the standard requires employers to either control MSD hazards or reduce MSD hazards to levels at or below those established in the standard. OSHA defines "control" as reducing MSD hazards "to the extent that they are no longer reasonably likely to cause MSDs that result in work-related medical treatment beyond first aid." The employer is required to implement initial controls within 90 days after it determines that the job meets the action trigger.
- *MSD management.* Within seven days after an employer determines that a job meets the action trigger (i.e., not more than 14 days after an employee initially reports an MSD), the employer must provide the reporting employee with MSD management, which consists primarily of two elements which are to be provided to the employee at no cost:

  1) access to a health care professional (HCP) for written evaluation of the employee's medical condition and recommendations for work restrictions, including time off, if necessary; and

  2) work restriction protection (WRP), which guarantees the employee all benefits and (i) 100% of the employee's salary, during periods of restricted work activity, and (ii) 90% of salary, during time off for recovery.

  The employer is required to maintain WRP only until the employee is able to resume work without restrictions or for 90 days, whichever is earlier. In addition, the employer's financial obligations may be offset by other coverage, such as any workers' compensation benefits the employee receives. Employers may also require employees to exhaust sick or similar paid leave. Finally, an employer may, at its cost, challenge the findings of an HCP by getting a second and third opinion.
- *Training.* The standard prescribes initial training and follow-up training every three years for: 1) each employee in a job that meets the action trigger (within 90 days after the trigger), 2) each of their supervisors or team leaders (within 90 days after the trigger), and 3) each employee involved in setting up and managing the ergonomics program (within 45 days after the trigger).
- *Periodic program evaluation.* The employer is required to evaluate its ergonomics program in accordance with the standard at least every three years, or sooner if the employer has reason to believe that the program is not functioning properly.

Qualifying for a Quick Fix

As an alternative to implementation of a full ergonomics program, an employer may respond to an MSD incident by implementing a "quick fix." A quick fix is an option for only those employers that have experienced no more than one MSD incident in the job at issue and for whom there have been no more than two reported MSD incidents in the past 18 months. To use a quick fix, the employer must promptly provide MSD management to the reporting employee, talk to the employees in the same job about the tasks they perform, observe them performing those tasks to identify risk factors, solicit employee suggestions to reduce those risk factors, and implement controls which reduce those hazards. The quick fix option must be implemented within 90 days of the employee's report, and the controls implemented must be reviewed not more than 30 days later to determine whether hazards have been reduced to the levels specified in the standard. Like a full ergonomics program, a quick fix must be implemented not only for a specific job in question, but for all jobs that are the same (i.e., that have the same physical work activities or tasks, even if the jobs have different titles or classifications).

Recordkeeping Obligations

Employers with 11 or more employees are required to maintain for three years, in either written or electronic form, and provide to OSHA upon request the following records:

- employee reports of MSDs, MSD signs and symptoms, and hazards
- employer responses to such reports
- job hazard analyses
- hazard control measures
- quick fix process
- ergonomics program evaluations
- work restrictions, time off work, and HCP opinions.

OSHA's ergonomics standard has been quite controversial, and industry groups have challenged it in court. It is possible that a federal court may issue a stay of the implementation and enforcement of the standard. ▶

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Congressman Dingell Calls for GAO Action on Accounting Profession

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year's bitter fight over maintaining auditor independence, suggest that GAO needs to take another look at the accounting profession," Dingell stated in the letter.

Dingell, the ranking member of the House Committee on Energy and Commerce and the U.S. representative who holds the distinction of serving the longest consecutive term, spearheaded the GAO's original investigation of the accounting profession, which led to *The Accounting Profession—Major Issues: Progress and Concerns*, a comprehensive report published in 1996.

In December 2000, the GAO submitted a report to Dingell and Phil Gramm (R–Texas), chair of the Senate Committee on Banking, Housing, and Urban Affairs, analyzing the major rule on auditor independence promulgated by the SEC, "Revision of the Commission's Auditor Independence Requirements" (RIN: 3235-AH91). The rule, received by the GAO on Nov. 21, 2000, was published in the Federal Register as a final rule on Dec. 5, 2000.

After hearing public comments from a number of accounting groups, including the New York State Society of CPAs and the AICPA, the SEC adopted amendments in the new rule regarding auditor independence that modernize the SEC's rules for determining whether an auditor is independent in light of investments or employment relationships between audit clients and auditors or their families.

Concerned about the possible impact of Dingell's letter, the AICPA earlier this month said it was monitoring the situation closely. "We're taking stock of the political landscape and looking at ways to respond—and the optimal timing of our response," said AICPA Spokesperson Cynthia Lund in a memo to the State Societies. "Right now, we haven't received any indication about the level of attention that the GAO might give this—it may be significant, and it might also turn out to be just a blip on the GAO's radar screen." ▶