Ergonomic Issues

Workplace: OSHA Is Trying to Regulate Injuries to Employees

By Roger Freeman

Both the scientific and legal community continue to fiercely debate the cause and cure for the broad group of injuries and illnesses known as cumulative-trauma disorders or repetitive-motion injuries and their nexus to such workplace activities as lifting, pulling, bending and other inherent body movements. Such venerable institutions as the University of Michigan and University of Wisconsin have established entire departments centered on the study of ergonomics, the science of work.

Numerous constituencies are now gearing up for the debate over the U.S. Occupational Safety and Health Administration’s recent proposed federal regulation governing the design and implementation of CTD prevention measures in the workplace. 64 Fed. Reg. 65768-66078 (1999).

Previously, OSHA had attempted to impose ergonomic programs on employers by utilizing the "general-duty clause" found in Section 5(a)(1) of the Occupational Safety and Health Act of 1970, 29 U. S.C. Section 654(a)(1). That provision authorizes OSHA to require employers to eliminate "recognized hazards" in the workplace which are causing or likely to cause death or serious physical harm to employees.

Controversy Over Standard

OSHA’s attempt to use the general-duty clause to regulate CTDs has been subject to intense criticism and repeated legal and administrative challenges, resulting in an unsteady and uncertain climate for the regulated community.

Many of those who have reviewed OSHA’s proposed ergonomics standard argue that things are only going to get worse. These opponents have prompted Congress to develop emergency legislation forbidding issuance of the standard, which President Clinton has promised to veto. The standard draws from the various guidance documents released by OSHA in the 1980s and early 1990s providing a general framework for developing ergonomic programs. Yet, there are significant differences derived in part from the efforts of numerous industry and lobbying groups to persuade OSHA to clarify the components of an ergonomics program and rectify the open-ended and vague nature of OSHA’s previous guidelines. The initial view from these groups is that OSHA has failed in this endeavor and has created a conundrum that will only lead to further legal challenges.

Proposed Standard

Numerous publications have attempted to summarize OSHA’s 310-page Federal Register proposal,
which targets manufacturing and manual-handling jobs in general industry — an estimated 1.9 million workplaces. (Construction, maritime and agricultural sectors are exempt.)

Employers in general industry will be required to implement a basic ergonomic program when covered CTDs or persistent CTD symptoms are reported. Specifically, if an employee in a manufacturing or manual-handling job experiences an OSHA-recordable CTD covered by the standard, employers must implement the complete ergonomics program for that job and all other jobs in the establishment involving the same physical-work activities.

A covered CTD is one that is reported after the effective date of the standard; is OSHA-recordable; has occurred in a job where the physical-work activities and conditions are reasonably likely to cause or contribute to the type of CTD reported; and is a core element or makes up a significant amount of the employee’s work time or both.

In addition, persistent CTD symptoms would also be covered if they last for at least seven consecutive days after they are reported; the employer has knowledge that a CTD hazard exists in the job; the symptoms occurred in a job where the physical work activities and conditions are reasonably likely to cause or contribute to the type of CTD reported; and these activities and conditions are a core element or comprise a significant amount of the employee’s work time.

OSHA has also proposed quick-fix provisions which will allow employers to avoid a full ergonomics program if CTD hazards are quickly and completely eliminated. If the quick-fix controls do not eliminate the CTD hazards within 120 days, or another CTD is reported in the same job within 36 months, a complete ergonomics program will be required.

If an employer determines that a full program is required under these criteria, the following elements must be met:

- **Management leadership and employee participation.** Employers must demonstrate management commitment to their ergonomics program and mechanisms for employee involvement.

- **Hazard information and reporting.** Employers must set up a method for employees to report CTD signs and symptoms and to receive prompt responses. They will evaluate employee reports of CTD signs and symptoms to determine whether a covered CTD has occurred. Employers must also provide information that explains how to identify and report CTD signs and symptoms.

- **Job hazard analysis and control.** Ergonomic risk factors that result in CTD hazards must be identified for the problem job. CTD hazards would then have to be eliminated or reduced to the extent feasible, using an incremental abatement process. If the CTD hazards only pose a risk to the employee with the covered CTD, the job-hazard analysis and control can be limited to that particular employee’s job.

- **Training.** Employers are required to train employees about CTD hazards and the overall ergonomics program, with follow-up at least every three years. Additional training may be required if new hazards are identified or changes are made in a problem job.
- **CTD management.** Employers must make CTD treatment available promptly at no cost to employees whenever a covered CTD occurs. CTD management may involve access to a healthcare professional and must include temporary-work restrictions and work-restriction protection.

- **Program evaluation.** Employers will be required to evaluate their ergonomics program at least every three years to ensure that it is in compliance with the standard.

Beyond the general outcry, a host of legal questions are being raised as to whether this standard meets the statutory criteria for issuance of a standard found in the OSHA Act, 29 U.S.C. Section 655. A central argument advanced by opponents to the standard is that the scientific and institutional data do not support a clear causal link between workplace activities and the range of injuries covered by the standard. Therefore, OSHA cannot show the standard will result in a reduction of workplace injuries or otherwise justify the resources required to implement the standard.

OSHA officials and other proponents counter by pointing to numerous studies identifying extensive savings to employers in workers' compensation and other costs through implementation of an effective ergonomics program. Proponents also underscore the genuine improvements in morale, teamwork and overall employee satisfaction attributable to the development of such a program. For more information about how this debate will be resolved, see the accompanying sidebar.

**Point of View**

**Reaching In: OSHA Blocks Repetitive-Motion Injuries**

The U.S. Occupational Safety and Health Administration has been struggling for years with the problem of implementing workplace controls over a series of injuries referred to as cumulative-trauma disorders or repetitive-motion injuries. This amorphous category of injuries ranges from such common afflictions as tendinitis and back pain to little-known conditions such as trigger finger and tenosynovitis.

From my perspective, having tracked this issue for many years and represented employers on numerous OSHA citations involving CTDs, the proposal raises an interesting legal/policy question: At what point is OSHA authorized to regulate an area inherently incapable of precise definition and standardization?

Regardless of whether experts study the issue for another 25 years, a debate will continue about whether and to what extent a particular job is the direct cause of an individual’s particular infliction. That question cuts across so many areas — from emotional, psychological and societal factors to individual body configuration, work habits, prior medical problems and a host of factors as variable as humankind itself — that developing a program to fit all employers in all situations is impossible.

The issue boils down to whether, in the face of this variability and uncertainty, OSHA may impose regulations on employers or must allow natural economic forces in the workplace to drive the evolution of design changes.

Perhaps this sweeping nature of the ergonomics issue and the fact that it cuts across so many
disciplines have made it so intensively studied and contentious. And the fact that every arm of government is scrutinizing the issue is, in an odd way, a tribute to the American governmental process and democratic system.

For those who wish to enter the fray, extensive commenting and hearing proceedings on the standard will take place early this year, with the deadline for initial written comments now extended to March 2. Contact OSHA’s Ergonomics Team at (202) 693-2116 or visit its Web site at www.osha.gov.

—Roger L. Freeman