

OSHA ergonomics rule will be costly, burdensome

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ITS ERGONOMICS RULE was published 14 November, 2000, by the US Occupational Safety and Health Administration (OSHA) in the Federal Register. The effective date of this regulation is 16 January, 2001.

The ramifications of this rule will be dramatic, costly and burdensome to the oil service sector, with little if any benefit to our workforce.

IADC, along with the Association of Energy Service Contractors (AESC), other business associations and many individual companies actively participated in opposing the proposed rule. The final rule will apply to all "general industry" employers. This means land rig operations, office personnel, yard facilities, as well as manufacturing or fabricating assets, will fall under the scope of this regulation.

KEY DEFINITIONS

In order to understand the basic requirements of this rule, several key definitions are in order.

Musculoskeletal Disorder (MSD) is a disorder of the muscles, nerves, joints, etc that affect the lower back, neck, knee, ankle, and other body parts.

In this regulation, OSHA does not consider injuries from slips, trips, falls, motor vehicle accidents or similar incidents to fall under the definition of MSD.

MSD Signs are physical findings such as decreased range of motion, deformity, loss of muscle function and/or decreased grip strength.

MSD Symptoms are physical indications such as pain, numbness, tingling, stiffness, etc. The IADC vigorously opposed the inclusion of such subjective criteria because of concerns regarding Work Restriction Protection (WRP) mandates.

Work Restriction Protection (WRP) is the maintenance of earnings and other employment rights and benefits.

KEY REQUIREMENTS

Information found in the Federal Register text and on the OSHA web site is rather confusing relative to the exact implementation dates for the WRP mandates as well as other sections of the rule.

Based on conversations with OSHA, it has been assured that none of the rule's requirements take effect until 15 October, 2001.

By that date, all covered employers must comply with the following initial action requirements of the standard.

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You must provide each current and each new employee basic information that addresses:

- Common musculoskeletal disorders (MSDs) and their respective signs and symptoms;
- The importance of reporting MSDs and their signs and symptoms early and the consequences of failing to report them in a timely way;
- How to report MSDs and their signs and symptoms in the workplace;
- The kinds of risk factors, jobs and work activities associated with MSD hazards;
- A short description of the requirements of OSHA's ergonomics program standard.

It is also necessary to make available to the employee a summary of the requirements of this standard. And you must provide this information in written form or, if all employees have access, in electronic form. You must provide this information to new employees within 14 days of hiring and you must post this information in a conspicuous place.

OSHA will allow a covered employer to use their Appendix A and Appendix B of this rule to comply with initial requirements to provide basic information on MSDs and a summary of the requirements of the standard.

OTHER ELEMENTS

The remaining elements of this regulation are required once an employee reports an MSD or the signs or symptoms of an MSD. Then, the employer shall promptly determine if the event or complaint qualifies as an "MSD Incident."

OSHA considers a report to be an MSD Incident if "The MSD is work-related and requires days away from work, restricted work, or medical treatment beyond first aid" or "The MSD signs or symptoms are work-related and last for seven consecutive days after the employee reports them to you."

Assuming the event or report meets either of these criteria, the employer then must determine if the employee's job meets the standard's Action Trigger.

Bear in mind that most State Worker's Compensation authorities require reports on accidents/incidents be submitted within five days of the alleged accident/incident.

The Action Trigger determination will require a separate investigation of each and every potentially covered report or event. First, the employer must ascertain if the complaining employee's job routinely involves exposure to one or more relevant risk factors, on one or more days per workweek, at the levels described in the Basic Screening Tool.

This exposure matrix is found in Table W-1 of the standard.

Examples of listed risk factors include, but are not limited to, jobs such as lifting more than 75 lb at any one time (100 lb sacks of chemicals), lifting more than 55 lb more than 10 times a day (pulling slips on a trip) and working with the back, neck or wrists bent or twisted for more than two hours a day (tripping pipe), or even walking across location.

If the complaint falls under the scope of any single listed risk factor, the employer is then required to either develop and implement a complete ergonomics program or comply with the Quick Fix option requirements of the standard.

The job is then determined to be a "problem job." The employer must comply with this part of the standard within seven calendar days after ascertaining if the complaint or report by the employee is an MSD Incident. If the employee's report or event is not considered an MSD Incident, no further action is required.

PROGRAM ELEMENTS

It is highly doubtful a drilling contractor will be able to successfully seek the relief offered by the Quick Fix option. Accordingly, the industry should anticipate being required to develop and implement a complete ergonomics program. The six required elements, not including recordkeeping mandates, are:

- Management leadership;
- Employee participation;
- MSD Management;
- Job Hazard Analysis;
- Hazard reduction and control measures;
- Training.

Management leadership requires the affected employer to provide designated persons with the authority, resources and information necessary to meet their responsibilities.

The employer must ensure that their policies and practices encourage and do not discourage the early reporting of MSDs, their signs and symptoms and MSD hazards; and encourage employee participation in the ergonomics program.

Our preliminary determination of this requirement is that the employer shall nominate one or more individuals to manage the ergonomics program and provide them with the necessary resources to effectively comply with the standard's onerous requirements.

The employer must comply with these requirements within 30 calendar days after determining a specific job meets the Action Trigger.

Each company will have to assess its Safety Awards or Safety Incentive programs to ensure that the system of rewards does not discourage employees from reporting MSDs.

Companies must reduce MSD hazards in all so-called problem jobs. To do this, the employer must either control the MSD hazards by using feasible engineering, work practice or administrative controls or reduce them to levels below what is reflected in Appendix D of the regulation, known as hazard identification tools.

Alternatively—and for our industry most importantly—if the company cannot reduce MSD hazards by such means, the employer is required to reduce the hazard(s) to the extent feasible; at least every three years assess the job and determine if there are additional feasible controls available; if such controls exist, companies must implement them until they have reduced the hazard(s) as specified in the standard.

The first required step to meet this part of the standard is to conduct a Job Hazard Analysis.

Once the analysis is complete, the employee then begins the implement of controls.

The job hazard analysis must be completed within 60 calendar days after you determine a job meets the Action Trigger. Further, the employer must implement initial job controls within 90 calendar days after such determination.

Employers may not utilize personal protective equipment (PPE) alone until you have proven engineering, work practice and administrative controls are not feasible.

Employers may supplement these controls with PPE, provided that the employer pays the complete cost of such equipment.

Required training includes initial and periodic training (every 3 years) for each employee in a job that meets the Action Trigger, each of these employee's supervisors or team leaders and for the other employees involved in implementing and managing the ergonomics program.

This training burden must be completed within 90 calendar days after the Action Trigger has been equaled or exceeded.

WRP IS A PROBLEM

The most problematic element of the rule is the MSD Management section and its Work Restriction Protection (WRP) sub-part.

If an employee's complaint is construed as an MSD Incident, and the job meets the Action Trigger criteria, the employer must provide access to a Health Care Professional (HCP), any necessary work restrictions, including time away from work, work restriction protection (WRP) and evaluation and follow-up of the MSD incident.

Numerous new requirements for involved Health Care Professionals were promulgated. However, the root of our concern is the requirement that the employer pay 90% of the employee's gross pay and 100% of benefits if the involved employee must take time off to recover from the MSD.

Companies would have to make up the difference between the weekly workers compensation benefit and the required 90% of the workers compensation.

This difference is not recoverable from the insurer, at least at present. The exact additional cost is variable, and would depend on the employee's pay rate, State that has compensation jurisdiction and each company's unique benefit package.

According to OSHA, payments above and beyond Workers Compensation benefits are taxable. It is our understanding the employer will be required to deduct FICA and income tax withholding from these payments and make required matching payments.

CHALLENGE MOUNTED

The **US Chamber of Commerce**, National Association of Manufacturers (NAM), the Alliance of American Insurers and other associations have already filed suit seeking to have the standard judicially reviewed.

Other suits are being considered by business associations and companies.

Assuming no relief is granted by the courts or the incoming administration, the IADC's HSE Ergonomics Subcommittee will hold an Ergonomics Workshop to provide training and documents necessary to meet the requirements of the rule. ■