The Occupational Safety and Health Administration (OSHA) has issued its long-awaited final rule for an Ergonomics Program Standard, 29 CFR Part 1910.900. This new standard contains stringent requirements for most nonconstruction employers to identify and abate musculoskeletal disorders (MSDs). The costs to implement the ergonomics requirements may be significant and, in some cases, may result in severe financial hardship. In the final rule are some surprising components that were not contained in the proposed rule. For instance, full implementation of the required program is now activated by defined “action triggers” for at least one of five specified MSD “risk factors.” Also, the final rule contains substantially expanded provisions addressing an employee’s right to dispute the findings of the initially consulted health care professional (HCP). Employers now face the possibility — and expense — of as many as three separate HCP evaluations regarding an alleged MSD.

One of the chief criticisms of the new standard is its potential for unfairly saddling employers with responsibility for MSDs that are not caused by the job. Although MSDs are defined as “work-related” disorders, the standard does not necessarily exclude the potential for an MSD to become “work-related” where circumstances outside the employer’s control, such as personal activities like tennis or weight lifting, or personal attributes, such as obesity, are contributing factors.

The new standard will become effective 60 days after its publication date (November 14, 2000). Employers should start assessing now what they must do to be in full compliance as of that date. The following summary prepared by the OSHA practice group of Jackson Lewis will assist employers in understanding their new ergonomics obligations.

**SCOPE OF THE STANDARD**

Which jobs are covered?
The standard applies to all general industry jobs. Employment covered by OSHA’s standards for the construction, maritime, and agriculture industries, including directly related office management and support services, are expressly excluded, as are railroad operations. Although the final standard has a broader application, the requirement for full implementation of the entire ergonomics program now depends entirely upon the actual report of, or of the signs and symptoms of, an MSD. Until such an occurrence, the final rule only requires employers to provide all employees with initial, basic information addressing recognition and reporting of MSDs.
When must full implementation of the entire ergonomics program occur?

The final rule requires employers to conduct a prompt investigation upon receiving any employee report of signs and symptoms of an MSD. If the report involves an event or condition that qualifies as an “MSD incident,” as defined by the standard, and if any of the five MSD risk factors are manifested in the associated job function in excess of a specified “action trigger” threshold, the employer must then implement the complete ergonomics program. In some cases, employers may be able to avoid full implementation if they qualify for the standard’s “Quick Fix” option.

What is an “action trigger”?  

The final rule contains a “Basic Screening Tool” that establishes defined thresholds, or “action triggers,” for each of five primary MSD risk factors. If the job involves any of the activities specified in the Basic Screening Tool in excess of the maximum duration established for the activity, employers must proceed with a detailed evaluation — a “job hazard analysis.” The results of this evaluation determine whether or not there is a “problem job,” i.e., a job that poses a potential MSD hazard.

Regardless of the results of the job hazard analysis, the employer will have to fully implement its ergonomics program (absent availability of the “Quick Fix” option). The job hazard analysis only determines the scope of implementation. If there is a problem job, all employees in that job must be included in the program. Otherwise, the employer may limit implementation to the employee involved in the MSD incident.

What are the primary elements of a complete ergonomics program?

The primary elements of a complete ergonomics program are:

1. Management Leadership;
2. Employee Participation;
3. MSD Management;
4. Job Hazard Analysis;
5. Hazard Reduction and Control;
6. Training.
The “Quick Fix” option may be available as an alternative to implementation of the full program, under certain conditions. If the employer is eligible to utilize this option, the employer must take steps to eliminate or reduce the identified MSD hazard within 90 days according to specific criteria set out in the standard.

**Management Leadership**

This program element measures the employer’s dedication to an effective program. To meet this obligation the employer must:

1. assign and communicate the responsibilities for setting up and managing the program;
2. ensure each responsible person has the necessary authority, resources, and information to meet his assigned responsibilities;
3. ensure company practices encourage, and do not discourage, prompt reporting of MSDs and employee participation in the program;
4. periodically communicate with employees about the program and any employee MSD concerns.

**Employee Participation**

To comply with this program element, employers must establish mechanisms for employee reporting of MSDs, respond promptly to employee reports, and involve employee reports, and involve employees in the development, implementation, and evaluation of the program. (Such participation, however, must be consistent with limitations on the use of labor management committees imposed by the National Labor Relations Act, according to the Preamble to the proposed rule). Employees must also receive a summary of the requirements of the standard and have ready access to the standard, the employer’s program, and general MSD information.

**MSD Management**

The term “MSD management” refers to the employer’s collective obligations to employees who have sustained a confirmed MSD injury. In addition to appropriate temporary work restrictions, this obligation includes ensuring employees receive prompt and effective medical evaluation and follow-up of their MSD and recovery by a health care professional (HCP), all at no cost to the employee. The final rule provides an affected employee with the right to obtain a second and even a third HCP opinion, if necessary, regarding his or her condition, all at the employer’s expense.

**Hazard Reduction and Control**

This element refers to the employer’s obligation to eliminate or materially reduce the identified hazards to the extent feasible,
using engineering, administrative and/or work practice controls, and, as a last resort, personal protective equipment (excluding back belts/braces and waist braces/splints). In other words, this element constitutes the acceptable goals of an ergonomics program.

In the standard, the word “control” is a term of art that effectively means complete elimination of a hazard. Absent complete control, identified hazards must be reduced to acceptable levels as defined by the hazard identification tools in Appendix D. Accomplishing either of these goals eventually may permit the employer to reduce the scope of its ergonomics program to the maintenance of controls and related training necessary to prevent a recurrence of the MSD. If neither preferred goal is achievable, the employer must reduce the hazard to the extent feasible and reassess the situation every three years to determine whether new solutions may be available.

**TRAINING**

As discussed above, all employees must receive basic MSD training. However, more detailed and specific training is required for employees in jobs where the action trigger has been activated, for their supervisors and team leaders, and for the employees involved in the set up and continuing management of the program. This focused training must include a re-emphasis of the MSD basic training, supplemented with information about specific MSD hazards and risk factors present in the relevant job. The training must also address the employer’s ergonomics program and the roles the respective trainees play in the program. Finally, the training must include details about the employer’s plan and timetable for correction of the hazards, as well as instruction regarding the employee’s role in evaluating the effectiveness of the chosen controls.

**PROGRAM EVALUATION**

Employers have a basic obligation to evaluate the ergonomics program periodically, i.e., at least every three years, to ensure it is effective and in compliance with the standard. This means:

- Consulting with employees in the program to assess their views on the program’s effectiveness and to identify any deficiencies;
- Evaluating the elements of the program to be sure they are functioning properly; and
- Ensuring that the program is achieving positive results, i.e., eliminating or materially reducing MSD hazards.

**RECORDKEEPING**

Employers are required to keep records if they have eleven (11) or more employees, including part-time or temporary employees.

- Employee reports and employer responses;
- Job hazard analyses;
- Hazard control records;
- Quick Fix control records;
- Ergonomics program evaluations; and
- MSD management records (work restrictions, time off, HCP opinions).

These records must be made available to employees, their designated representatives, and OSHA representatives upon appropriate request. In most cases, records must be kept for three years.

**SANCTIONS AND PENALTIES**

As with all alleged violations of safety and health standards, OSHA can issue proposed penalties as part of the citation process. Penalties can range from zero for “other than serious” violations, to $7,000 per violation for “serious” violations, and up to $70,000 per violation for willful or repeat violations.

It is unclear what impact this new standard will have on other federal or state laws, such as the Americans With Disabilities Act, the Family and Medical Leave Act, or state worker’s compensation statutes. It is also unknown whether employees can claim retaliation under Section 11(c) of the Act for denial of work removal protection (WRP) in violation of the standard.