

OSHA'S ERGONOMICS STANDARD: THE VAMPIRE AWAKENS AGAIN

Insights

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To say that the efforts of California's Division of Occupational Safety and Health to reduce repetitive motion injuries in the workplace has had a tortured history is, if nothing, a bit of an understatement. In 1993, the legislature directed CalOSHA to implement an ergonomics standard by January 19, 1995, designed to reduce the number of repetitive motion injuries in the workplace. CalOSHA failed to do so and was ordered by the courts to establish such a standard by or before December 1996. In November 1996, CalOSHA adopted a standard which became effective in 1997. This new standard was largely reactive in its approach and was promptly challenged in court by both business and labor groups. Ultimately, in 1999, following protracted litigation, the California Court of Appeal upheld the standard and struck down its regulatory exemptions for employers with less than ten employees. Also in 1999, the legislature enacted additional legislation reaffirming its concerns over the prevalence of repetitive motion injuries in the workplace and confirmed CalOSHA's continuing duty to carry the legislature's initial directive.

Then again, in February 2002, additional legislation was introduced requiring CalOSHA to adopt revised standards for ergonomics in the workplace by July 1, 2003. Governor Davis vetoed the bill. The upshot of all this legal and legislative wrangling is that CalOSHA's ergonomics standard is unpopular with both business and labor, and it has done little to address concerns over repetitive motion injuries in the workplace. Indeed, after the initial fervor over the implementation of these standards, many employers appear to have lost interest in ergonomics and the elimination of repetitive motion injuries.

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Meanwhile, federal OSHA adopted an ergonomics standard in 2000, but that standard was nullified by Congress under the Congressional Review Act in 2001. Nevertheless, pressure remained on CalOSHA to comply with the California legislature's mandate to address repetitive motion injuries.

A New Approach

CalOSHA now appears ready to take a different and more proactive approach to meeting its obligation. Specifically, CalOSHA has indicated it will use enforcement of Labor Code section 3203 requiring implementation of an Injury and Illness Prevention Plan (IIPP) to attack the repetitive motion injury problem. In other words, CalOSHA now appears poised to require employers to be more proactive as opposed to reactive in addressing ergonomics and repetitive motion injuries issues in the workplace by requiring that they have effective means in place in their IIPPs to identify and reduce the risk of such injuries.

Whats An Employer To Do?

California employers should be prepared to take a more proactive approach in attempting to deal with repetitive motion injuries in the workplace. Specifically, employers should consider taking the following minimum steps: (1) reviewing their IIPP to ensure that it provides some mechanism for identifying repetitive motion injuries in the workplace and the risks of such repetitive motion injuries; (2) where appropriate, work with legal counsel and consultants to devise an effective plan for addressing such potential risks and injuries; and (3) avoid knee-jerk "ergo" solutions to problems that may or may not exist. For example, employers should not simply rush out and buy "ergonomically correct" chairs and other office furniture. Rather, employers should take a much more measured approach in attempting to identify the risks and then develop a strategy to determine how best to address those risks, as they would with any other source of legal exposure.