An update on current loss control regulatory and technical issues

NATLSCOPE

Winter 2001

OSHA issues controversial, final ergonomic rule

Several controversial issues, including pay for workers recovering from musculoskeletal disorders (MSDs), remain in a federal ergonomics standard that has been expanded to include all employers in general industry. The final ergonomic rule was published by the Occupational Safety and Health Administration (OSHA) on Nov. 14, 2000.

MSDs covered by the new rule include common ailments such as carpal tunnel syndrome and other repetitive stress injuries.

The standard becomes effective Jan. 16, 2001.

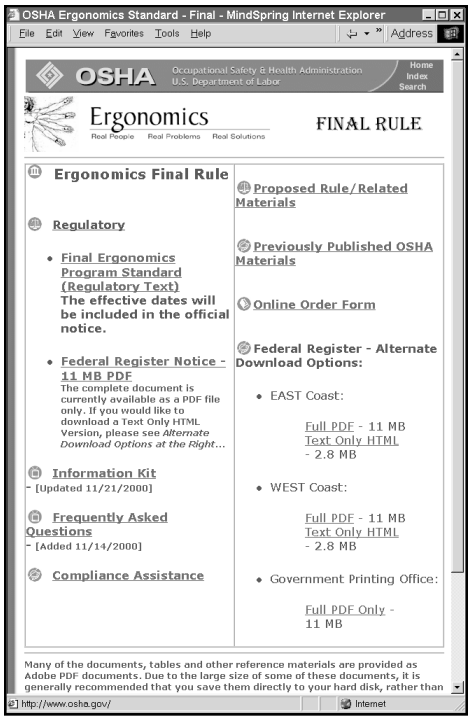
Anticipated challenges

A number of court challenges are expected to delay the implementation of this rule for an extended period, possibly years.

The National Association of Manufacturers is seeking judicial review of the rule, claiming medical science does not adequately support it, the rule is too vague to be constitutional, it contains a "fatally flawed" economic analysis and the rule was promulgated with procedural violations.

It could take up to 18 months to complete the lawsuit, attorneys estimated.

Meanwhile, the American Insurance Association (AIA) also may ask a court for a stay of the rule because of what it sees as a redefinition of workers' compensation standards, which the AIA contends are supposed to be regulated by the states.



The full text of the controversial ergonomics final rule, which was published Nov. 14, is available on OSHA's Web site at www.osha-slc.gov/ergonomics-standard/index.html.

Controversial provisions

Action trigger: The single-injury trigger was one of the most controversial issues in OSHA's earlier drafts of the rule.

Industry complained that expanding the rule's coverage to all industry with the report of a single injury was too onerous.

In response, labor unions charged that OSHA standards have never required that an employee be injured before a standard is applied.

This provision remains in the standard.

Work-restriction protection: The standard provides wage and benefit protections designed to encourage early reporting by employees and treatment.

These entitlements exceed current workers' compensation cash benefits in most, if not all states. OSHA's proposal is, therefore, in direct conflict with the state-based workers' compensation systems.

This issue is being opposed by many employers, as well as the insurance industry.

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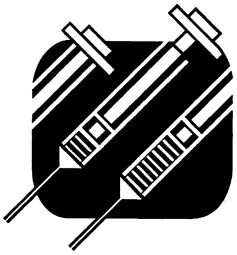
Needle-injury regulations are strengthened

A recently passed national law, H.R. 5178, S. 3067, amends the Occupational Safety and Health Administration (OSHA) Bloodborne Pathogen Standard to require hospitals and other health-care facilities to identify and provide safer sharps systems that include needles and blades.



Healthcare facilities also will have to maintain a sharps injury log and involve health-care workers in the selection of safer technologies.

The strengthening of the OSHA standard is intended to provide greater workplace protections against the transmission of pathogens such as human immunodeficiency virus (HIV) and hepatitis B and C. Research by the Centers for Disease Control indicates that 325,000

NEEDLE INJURY, continued on 4

Inside:

Check sprinkler-system piping for corrosion

Microbiologically influenced corrosion (MIC), a well-known problem in various industries and piping systems, has been identified as a problem in automatic fire sprinkler systems in a number of communities.

MIC action on the metallic piping in a sprinkler system can range from premature failure of piping to a source of obstruction, which limits water flow.

The problem is likely to be overlooked until a physical deficiency, such as a leak, occurs.

In the case of an obstruction, a severe blockage could prevent needed water discharge from a sprinkler head at the time of a fire.

Corrosion starts as slime

MIC is a distinct type of corrosion in which microscopic organisms, such as microbes or bacteria, influence the corrosion process in metallic piping.

MIC starts as a slime growth on the interior surface of metallic objects. The microbe action results in the formation of deposits or nodules inside the pipe, often with severe interior pitting.

It is believed that many microbes are capable of causing problems in piping. Investigation has revealed that the organisms that form MIC are present in many public water supplies, as well as nonpotable or raw water.

Typical water treatment processes do not eliminate the microbe action.

All types of water-based fire protection systems using metallic piping have experienced documented cases of MIC. Most often the problem is first noticed with pinhole leaks in sprinkler piping.

By the time this occurs, there likely is significant detrimental action on the piping system, which might necessitate substantial expenditures to repair damaged system components.

The fire protection community is still attempting to better understand the conditions conducive to MIC action and to develop procedures to reduce or minimize the effects.

MIC problems in sprinkler piping have been reported in 13 states throughout the United States, including several episodes in Arizona, and in two Canadian provinces.

Check interior of piping

At this time, the best action is to periodically monitor the interior condition of existing metallic sprinkler piping for MIC development, particularly in communities where MIC problems are known.

A specialist experienced in identifying the problem should be used. Corrective action can range from cleaning piping interior to replacing severely deteriorated sections.

A special water treatment program might be appropriate for minimizing further MIC development.

For new automatic sprinkler systems, the water should be tested before the sprinkler system is installed to assist in developing arrangements or chemical treatments to minimize MIC growth.

NFPA offers guidance

The 1999 edition of National Fire Protection Association (NFPA) 13 — Standard for the Installation of Automatic Sprinkler Systems — includes a new section, 9-1.5, to deal with new sprinkler systems in which the water system is known to be susceptible to MIC development.

For existing sprinkler systems, NFPA 25 — Standard for the Inspection, Testing and Maintenance of Sprinkler Systems — has an appendix item in the 1998 edition dealing with MIC.

Expect more specific language in future editions of these standards for dealing with this evolving problem.

For more information or assistance regarding this topic, please contact:

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Record checks can deter negligent hiring, retention

If found guilty of these practices, your vehicle accident settlement costs may go up

Negligent hiring and negligent retention are two legal issues that can increase your company's cost of settlement in a vehicle liability accident.

To avoid negligent hiring issues, it is important for an employer to:

- Have a properly completed application for every driver applicant.
- Review the application during the employment interview.
- Contact previous employers for references.
- Review the applicant's driving record against company standards.
- Properly train the driver in the type of vehicle to be operated.

Negligent retention issues should be addressed by checking driving records at least annually and by taking corrective action on drivers with driving records that do not meet company standards.

More information on this subject can be found on the Internet at www.instant-info.com/neghire.

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Losses resulting from industrial fires increased last year

Recently released figures by the National Fire Protection Association (NFPA) indicate there were some 17,500 fires in industrial properties during 1999, a 9.4 percent increase compared to 1998.

In the same release, the NFPA reported an increase in damage from industrial fires of more than 175 percent compared with the dollar loss in 1998.

Overall, fire deaths in the United States declined in 1999 to 3,570, an 11 percent decrease from 1998. For comparison, in 1979 the number of deaths from fire was 7,575, or 53% more than the current report. In 1989, the number of deaths from fire was 5,410, or 34% higher than the current report.

Firefighters did not fare well in the most recent report. In 1999, 112 firefighters died in the line of duty in the United States, an increase of 21 deaths compared to 1998.

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ERGONOMIC RULE, continued from front page

Compliance timelines

Initially, **within 11 months of the standard's enactment**, each employer covered by this standard must provide each current and new employee basic information about:

- Common MSDs and their signs and symptoms
- The importance of reporting MSDs
- How to report MSDs
- The risk factors and job and work activities associated with MSD hazards
- A short description of the requirements of this standard

The remainder of the standard comes into effect 11 months after its enactment and then only upon reporting of an MSD by an employee.

The chart below summarizes the activities required and the time frames for completing each.

The full text of the standard is available on OSHA's Web site at www.osha-slc.gov/ergonomics-standard/index.-html.

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Requirements and Related Record Keeping	Time Frames
Paragraph (e), (f): Determination of action trigger	Within seven calendar days after you determine that the employee has experienced an MSD incident.
Paragraphs (p), (q), (r), (s): MSD management	Within seven calendar days after you determine that a job meets the action trigger.
Paragraph (h) & (l): Management leadership and employee participation	Within 30 calendar days after you determine that a job meets the action trigger.
Paragraph (t)(4)(i): Train employees involved in setting up and managing your ergonomics program	Within 45 days after you determine that a job meets the action trigger.
Paragraph (j): Job hazard analysis	Within 60 calendar days after you determine that a job meets the action trigger.
Paragraph (m)(2): Implement initial controls	Within 90 calendar days after you determine that the employee's job meets the action trigger.
Paragraph (t)(5)(ii): Train current employees, supervisors or team leaders	Within 90 calendar days after you determine that the employee's job meets the action trigger.
Paragraph (m)(3): Implement permanent controls	Within 2 years after you determine that a job meets the action trigger, except that initial compliance can take up to 4 years and 60 days after the date of publication of this standard.
Paragraph (u): Program evaluation	Within three years after you determine that a job meets the action trigger.

NEEDLE INJURY, continued from front page

workers in hospital settings are exposed to needle stick injuries each year.

H.R. 5178 revises OSHA's Bloodborne Pathogens Standard, 1910.1030, as follows:

Additional definitions

The definition of "engineering controls" will be modified to include the following examples: "safer medical devices, such as sharps with engineered sharps injury protections and needleless systems."

Additional Exposure Control Plan review requirements

The annual written Exposure Control Plan review and update shall also include:

♦ A reflection of changes in technology that eliminate or reduce exposure to bloodborne pathogens.

♦ Annually document the consideration and implementation of appropriate commercially available and effective safer medical devices designed to eliminate or minimize occupational exposure.

Additional record-keeping requirements

The employer shall establish and maintain a sharps injury log for the recording of percutaneous injuries (through the skin) from contaminated sharps.

The information in the sharps injury log must be maintained in such a manner as to protect the confidentiality of the injured employee. See sidebar at right regarding what this log must contain.

Additional requirement regarding employee input

An employer who is required to establish an Exposure Control Plan shall solicit input in the identification, evaluation and selection of effective engineering and work practice controls from nonmanagerial employees who are responsible for direct patient care and are potentially exposed to injuries from contaminated sharps.

The employer shall document the solicitation in the Exposure Control Plan.

Effective date of changes

The revisions provided for in H.R. 5178 will be published in the *Federal Register* within six months of the date of enactment (Nov. 6, 2000) and will take effect at the end of 90 days after such publication.

Who will this affect?

This legislation requires users of "sharps" (for instance, lancets, angiocatheters, needles) to actively evaluate and utilize safe technology that has been available for several years.

Employers that will be almost exclusively affected by this law are those that provide health-care services as their primary line of business (for instance, hospitals, nursing homes and clinics).

Employers who have a bloodborne pathogens program because they have emergency responders in the workplace that provide first aid or medical care at the Emergency Medical Technician – A level will be minimally affected by this law. That's because their emergency responders are not trained in procedures that utilize sharps.

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Injury log requirements

The sharps injury log must, at a minimum, contain:

☑ The type and brand of device involved in the incident.

☑ The department or work area where the exposure incident occurred.

☑ An explanation of how the incident occurred.

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