



## Ergonomics: Back in the Ring

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In November 2000, OSHA released the long-awaited ergonomics standard. The business community railed against it, saying it would cost them anywhere from \$20 billion to more than \$100 billion a year. They also argued that it federalized the workplace, and was a standard based on "junk science." Meanwhile unions praised the standard. Although they would have preferred a tougher standard, unions considered it "the most important action ever by OSHA."

Mike Barody, senior vice president for policy at the National Association of Manufacturers, said, "The breathtaking speed with which OSHA has promulgated the ergorule makes it clear: "This is not a health and safety rule, it's a political payoff. It's a scandal."

Upon the standard's release, AFL-CIO President John Sweeney said, "The new standard will prevent hundreds of thousands of crippling repetitive strain injuries each year. Workers in poultry plants, meat packing, auto assembly, computer operation, health care, service industries and others in high-risk jobs will finally have much-needed protection."

Medical groups lined up on both sides of the standard. Many of their concerns centered on whether the proposed standard properly included the medical community when diagnosing and treating ergonomic injuries.

Then in March 2001, Congress overturned the standard, with President Bush signing the repeal. Unions were aghast. "Dishonest and disgraceful are not strong enough words to describe the Senate vote against injured workers," Sweeney said. "The voices of Democrats who gave cover to this assault on worker safety is especially dishonorable."

OSHA convened forums the summer of 2001 to re-examine the ergonomics issue. Unions called the hearings "a sham stacked in favor of Big Business." OSHA was to issue an ergonomics update in the fall of 2001, but delayed it as the agency addressed the recovery and cleanup efforts at the World Trade Center disaster site.

What will happen next? Following are two conflicting viewpoints regarding the ergonomics situation.

## Jordan Barab<sup>1</sup>

### Lies, Partisanship Caused Ergo Standard to Crumble

[In March 2001], following a few token hours of debate, the Republican-controlled Congress repealed OSHA's final ergonomics standard, a standard that had been a decade in the making. It was the first time in OSHA's 30-year history that an existing workplace safety and health standard was rescinded.

On the surface, the Congressional "debate" was about the alleged flaws of the Clinton standard. But this drastic and unprecedented action was much more about politics and ideology than about facts and protecting workers. The congressional vote was actually the culmination of 10 years of attacks on the science behind ergonomics; battles over stop-work orders from Republican-controlled Congress; industry opposition to state standards in California, Washington and North Carolina; opposition to ergonomic guidelines; and dire warnings from business associations that a federal ergonomics standard would foretell the collapse of capitalism.

After a decade of bitter trench warfare, it is not easy to recall that ergonomics was hardly controversial when the regulatory process began in 1990. In fact, it was a Republican Secretary of Labor, Elizabeth Dole, who announced on Aug. 30, 1990, "a major initiative to reduce repetitive motion trauma, one of the nation's most debilitating across-the-board worker safety and health illnesses of the 1990s."

It is clear that OSHA has the authority as well as an obligation to take decisive action to protect workers from ergonomic injuries. The Occupational Safety and Health Act of 1970 authorized the secretary of Labor "to set mandatory occupational safety and health standards" in order "to assure so far as possible every working man and woman in the nation safe and healthful working conditions."

#### **Danger to Workers**

Work-related musculoskeletal disorders are the biggest health and safety problem facing American workers. In 1999, according to the Bureau of Labor

## Scott A. Mugno<sup>2</sup>

### Voluntary Efforts Derail Ergonomic Injuries

Companies are capable of improving workplace safety, without constant OSHA intervention and oversight. My company, FedEx Express, is an example of how a company can continually improve worker safety.

FedEx Express is committed to workplace safety. It expends significant effort each year responding to concerns over the safety and health, as well as the comfort and level of exertion, of its workforce through improvements in the work environment, employee training and equipment improvements. As a consequence, FedEx Express has successfully lowered its rate of recorded injuries and illnesses every single year for the past five years.

Specifically, in the soft tissue-type injuries, FedEx Express improved 31 percent between fiscal 1997 through fiscal 2001. This exceeds the downward trend of approximately 25 percent reported by the Bureau of Labor Statistics for a similar period of reported years and similar cases. Additionally, FedEx Express has realized an approximate 61 percent improvement in lost workdays for the same period.

Yet, like most employers nationwide, FedEx Express continues to receive reports of so-called musculoskeletal disorders, and signs and symptoms of such disorders that might qualify as "incidents" under current or previously proposed regulations. Accordingly, FedEx Express anticipates that it could be responsible for implementing many unnecessary elements of any required ergonomic standard and program.

#### **Ergonomics Confusion**

While FedEx Express is certainly aware of the meaning that "ergonomic injury" has taken on since this debate started, it has no better understanding today of how a so-called ergonomic injury might be defined from an enforceable scientific or regulatory standpoint. A brief look at this issue's recent past demonstrates this point:

Statistics, more than 600,000 workers suffered serious workplace injuries caused by repetitive motion and overexertion. And persuasive evidence was presented at OSHA's ergonomics hearings that musculoskeletal disorders are significantly underreported. While the recorded numbers have been declining over the past several years in line with the general decline in injuries and illnesses, musculoskeletal disorders comprise, year after year, one-third of all lost work time injuries and illnesses. Yet only 16 percent of employers nationwide have developed effective ergonomics programs.

The workers most at risk are not those working for large profitable corporations, but low-wage workers who toil in places such as the garment industry or in poultry processing plants. During the extensive OSHA hearings on the ergonomics standard, one poultry worker told of grabbing 10,000 live chickens a day and placing them on fast-moving overhead shackles. Often considered expendable by their employers, too many labor through the pain without complaining until they are too disabled to work.

The science behind ergonomics is strong. Work-related musculoskeletal disorders are "an important and costly national health problem," according to the most recent National Academy of Sciences report. After reviewing more than 800 authoritative studies, the academy concluded there is clear and unequivocal evidence that musculoskeletal disorders are caused by exposure to ergonomic hazards at work, and that ergonomics programs are effective in reducing these disorders. Furthermore, workers' compensation costs for these injuries are estimated at \$13 billion to \$20 billion annually; the overall costs to the economy at \$45 billion to \$50 billion. This was the latest in several reviews of the science behind workplace ergonomics. An ergonomics standard should have been a "no brainer" to anyone who took the intent of the law seriously and was concerned about protecting workers.

### **Standards Usually Benefit, Not Hurt**

Opposition to new OSHA standards is, of course, nothing new. Regulated industries have fought every standard that OSHA has ever proposed. They traditionally claim that the regulation would be too costly and that they could protect their workers

- OSHA recently, and Washington state currently, define it as a "work-related musculoskeletal disorder."
- California OSHA currently defines it as a "repeated motion injury."
- The Bureau of Labor Statistics records "repeated trauma disorders."
- The American National Standards Institute is working on a definition of "cumulative trauma disorders."
- National Academy of Sciences recently stated these disorders are "an alteration in an individual's usual sense of wellness or ability to function."
- The Occupational Safety and Health Review Commission recently stated the vast majority of these reported disorders could not be linked to any detectable tissue or body damage.
- A recent Mayo Clinic study reinforces the inability to answer this long outstanding question. After years of being the paradigm example of these disorders, the Mayo Clinic study found the absence of elevated carpal tunnel syndrome levels among computer users.

With only the above definitions, terms and descriptions available, and without an objective definition - a definition with wide acceptance and consensus from the experts - safety professionals cannot provide clients with the advice and consultation required.

The obvious next question is: How then does FedEx Express explain its improvements in soft tissue-type injury percentages? Simple. FedEx Express, as well as many other employers, has excellent safety programs that contain time-tested processes and well-defined safety issues that prevent or minimize workplace incidents from occurring. Furthermore, the company has the unquantifiable benefit of addressing the other safety issues, such as the difficult-to-define causation and worker satisfaction elements, including the knowledge that their company values and cares for its employees.

Our successful program and processes did not occur overnight. They are the products of trial and

better without government intervention. Eventually, OSHA would issue a standard. Workers were protected from unnecessary injuries, illnesses and death. The costs would be found to be not only far below industry's dire predictions, but also below OSHA's. As a bonus, the regulations often encouraged modernization and more efficiency in the regulated industries.

So why was ergonomics different and so bitter? How did what began as a bipartisan search for a solution turn into one of the most partisan issues of the decade? What are the implications for safety and health professionals and for worker protection?

The ergonomics issue had the bad fortune of coming along just as the Newt Gingrich-inspired anti-government militants took control of Congress. Business associations like the U.S. Chamber of Commerce and the National Association of Manufacturers followed step by step by purging their ranks of any person or policy smelling of moderation or sympathy for workers' concerns. The result was that these business associations elevated ergonomics and anti-OSHA activism to their No. 1 issue, and Congress became involved in the regulatory process. Battles raged in Congress every year over whether OSHA would be allowed to proceed with its ergonomics regulation.

### **Scalia a Culprit**

One of the opposition leaders was Washington lawyer Eugene Scalia. He dedicated himself almost exclusively to the anti-ergonomics cause. Scalia wrote that the science behind ergonomics was "quackery," and that unions were only interested in an ergonomics regulation in order to "force companies to give more rest periods, slow the pace of work, and then hire more workers." (Read: dues paying members.)

Perhaps the most significant anti-regulatory development of the past decade was the quiet passage of the Congressional Review Act in 1996. The Congressional Review Act was a Gingrich creation that, combined with control of both houses of Congress and the White House, was able to expunge a major worker protection from the books without the public input and legal justification traditionally required.

error, continuous improvement, and a balance of flexibility and consistency. Because of the lack of consensus in expert advice and consultation, the inability to distinguish non-work-related injuries from work-related injuries, and due to differences among individuals, our facilities, our customers' facilities and the continuously changing public environment our employees work in, the processes and procedures to improve our employees' safety, health and comfort are very different from location to location and must be very flexible. Consequently our approach, along with that of many other employers, cannot be captured in a standard and then inspected for compliance. The latter process requires objective causation, diagnosis, treatment and prevention.

### **Difficult Diagnosis**

With few exceptions, neither OSHA nor "the experts" have been able to identify "ergonomic" harm with systematic, medically recognized diagnoses. They have been unable to separate real injury and illness from transient symptoms or the aches and pains of daily life. And what about the normal process of aging that everyone experiences to some degree? The category known as "work-related musculoskeletal disorders" selected by OSHA and other agencies to address these conditions is too large to allow meaningful analysis.

At present, in response to strong market incentives and based on current scientific knowledge, many companies and their employees already are doing what reasonably can be done to minimize ergonomic injuries. These injuries are declining dramatically at FedEx Express without OSHA intervention. This means the current level of knowledge is adequate to support an employer's voluntary application of ergonomic principles to workplace activities, but is insufficient to justify adoption of an OSHA standard that would impose significant mandatory requirements on all employers.

### **The Means Don't Improve the End**

A rule that is overly vague and broad will discourage innovation and will lead to a substantial misallocation of resources. That very result occurred at FedEx Express prior to Congress rescinding OSHA's standard and continues today, on a limited basis, with the current California and

The extremism and "take no prisoners" philosophy of the ergonomics opponents also had an effect that should alarm safety and health professionals: There was virtually no testimony during the OSHA hearings from companies that had run successful ergonomics programs. This was disappointing, as publications ranging from peer-reviewed scientific journals to airline magazines were full of stories about successful and profitable ergonomics programs that would easily have met OSHA's regulation in most respects.

Instead, the hearings and the fights in Congress were dominated by the "refuseniks." These industry association representatives, along with a few large corporations like UPS and Anheuser-Busch, refused to recognize that work-related musculoskeletal injuries even exist or that there was any such thing as a successful ergonomic program. In fact, they not only opposed an OSHA regulation, they also opposed guidelines from OSHA or the American National Standards Institute. They even opposed development of "best practices."

This reluctance of individual companies to come forward was understandable, considering the attacks of the anti-ergo zealots on business leaders who take seriously the job of protecting their employees. In the October 1995 issue of the *Judicial/Legislative Watch Report*, Eugene Scalia wrote that:

"While keeping an eye on government regulators, businesses must also keep tabs on their own in-house ergonomists .. the more in-house ergonomists speak of carpal tunnel syndrome, cumulative trauma disorders, and the medical necessity of their expensive proposals, the more corporate managers should take a long, hard look at what it is they're being sold."

More recently, Treasury Secretary Paul O'Neill was called "manifestly unsuited to the job" by the conservative *National Review* because "he spent the first months of his tenure trying to improve worker safety and office cleanliness at Treasury." *Reason* magazine accused him of spouting "inane

Washington state standards.

Because these state standards give no indication as to what compliance is before some triggering event occurs or a compliance officer arrives to investigate, FedEx Express was and is forced to redirect its focus to defending itself and its current successful efforts from these broad, vague standards. This has put on hold and set back several promising initiatives the company would rather have worked on. Because of this diversion in resources, these new or proposed standards are having the opposite effect of their proponents' intended purposes.

### Suggestions To Use

By law, until OSHA can prove that what it wants to do is "reasonably necessary and appropriate to mitigate to a significant degree a significant risk," the agency may not create any mandatory requirements. What it can and should do is continue to seek to inform itself, employers and employees about the current state of knowledge concerning ergonomics, encourage research and innovation, and work cooperatively to understand the problem better. Specifically, OSHA should:

1. Examine in a systematic and detailed manner the experience of those companies that signed consent agreements to settle OSHA ergonomics citations between 1985 and the present. An evaluation of the nearly 500 cases between 1985 and 1995 (considering the specific medical conditions experienced, the various jobs and activities involved, and the control measures employed) should provide OSHA with the ability to develop specific information about causes and, equally important, the magnitude of risks, as well as the effectiveness of OSHA's approach to this issue. Such a study should examine the employer's changes in injury and illness rates by job, type of injury or other appropriate category. To our knowledge, OSHA has not attempted such a systematic approach to date.
2. In cooperation with trade associations, labor organizations and industry groups, OSHA should prepare industry- and task-specific materials for use by employers in adopting voluntary programs, and fund assistance programs for business at a much higher level than presently contemplated.

things" for his suggestion that a company should lose its license to operate if it cannot make its workplace safe.

### Many Lies

Perhaps the most disturbing part of the battle was the triumph of the "Big Lie" and its effect on the political process. During the final battle over the congressional Review Act, the U.S. Chamber of Commerce and National Association of Manufacturers delighted in alarming its members with the specter of an indecipherable 608-page OSHA regulation. How many business owners consequently chose to get information from the Chamber instead of reading the actual standard themselves, never realizing that they had been lied to? The standard was actually only nine pages long and written in plain English.

The Food Marketing Institute, representing 22,000 grocery stores, claimed that the standard would have prohibited employees from lifting turkeys weighing more than 15 pounds. How many grocery store owners fired off outraged letters to their congressional representatives because they believed this lie? In fact, nowhere did the standard state that employees were prohibited from carrying 15-pound weights.

Safety and health professionals should ask themselves where their CEO is receiving information and advice on national safety and health policy - from the National Association of Manufacturers and the Chamber, or from the company's safety and health experts? OSHA staff were frequently astonished to read a "success story" about a company's ergonomics program, only later to receive a form letter from the CEO claiming no scientific proof exists that work can cause most musculoskeletal disorders, or proof that ergonomic intervention can prevent them.

Given the existence of the Congressional Review Act and the "ends justify any means" tactics of these associations, will OSHA ever have the ability to protect workers from significant hazards through rulemaking? What does such hostility in Congress and in the business associations to any government role in protecting workers mean for the health and safety profession and its efforts to protect workers? Sadly, we are already seeing

3. OSHA, specifically its consultation and training organizations, should continue and enhance education and awareness services on the varying aspects and issues of this area. These services should include its many characteristics such as personal, physical and psychological conditions. Note that the terms "guidance," "guidelines" or "best practices" were not used. We are forced to make that distinction because these terms have been forced into use as industry norms, standards and even "minimum requirements." Given all the open questions in this area, that cannot be allowed to happen.

FedEx Express supports the approach to this issue announced earlier this year by Secretary of Labor Elaine Chao. We agree with her principles of prevention, sound science, flexibility, clarity and incentives. OSHA should continue to keep safety and health at the forefront of this issue, use only the best available facts, and only implement actions when the agency is assured they will only improve safety and health - not impede them.

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indications that without a standard or any indication that OSHA is taking this problem seriously, many employers are backing off from plans to address workplace ergonomic problems.

If there is to be any meaningful future for OSHA, for the safety and health profession, or for worker protection in this country, safety and health professionals need to take control of the debate back from the ideologues and refocus on what really matters: how best to protect workers.

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