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Recent
Developments

CONGRESS OVERTURNS OSHA'S WORKPLACE ERGONOMIC RULES (March 7, 2001)

Summary: On November 13, 2000, the Occupational Safety and Health Administration (OSHA) issued extensive and burdensome ergonomics rules that requires virtually all employers to create special programs to protect employees against repetitive stress disorders. The new OSHA rules were sponsored by the Clinton administration and were strongly supported by organized labor, but came under immediate attack by a broad spectrum of business groups, who argued that the new rules were too costly and extreme. As a result, these rules garnered immediate attention from the Bush administration and the new Congress.

Today (March 7, 2001), the House of Representatives, following the Senate's lead from yesterday, voted to kill the new regulations. President Bush will undoubtedly sign this legislation, thereby relieving employers from the substantial time and expense of complying with these regulations.

Details: After years of wrangling, OSHA issued a Final Rule that implemented its Final Ergonomics Program Standard. Under this new standard, employers were required to educate employees about common musculoskeletal disorders ("MSDs"). Moreover, if MSDs were deemed to have occurred in the workplace, employers were required to implement a comprehensive ergonomics program. The new rules were extensive and detailed, including nearly 700 pages of ergonomics standards. The projected cost of compliance for businesses was projected to be between \$4.5 billion and \$125.6 billion annually.

Although these regulations had been part of a decade-long political fight, they were issued a mere four days before President Bush took office. Therefore, they were viewed by many as the Clinton administration's repayment to the labor unions for their support, rather than as a thoughtful response to repetitive-stress injuries. Opponents of the new rules argued that they would push many manufacturing jobs offshore because of the substantial expense associated with compliance. They also criticized the fact that the new rules would have required that injured workers be provided with 90 percent of their lost pay instead of the two-thirds pay that is common in most state workers' compensation systems, including California's system.

Those that favored the OSHA rule responded that MSDs affect about 1 million U.S. workers and cost between \$45 billion and \$54 billion in compensation expenses, lost wages and decreased productivity. In fact, Senator Edward Kennedy strenuously argued that "instead of helping hard-working Americans, this resolution [overturning the OSHA rules] is a big thank-you to big business for all their support" of the Republicans.

Labor Secretary Elaine Chao has previously stated that if the ergonomics rules were repealed, she would pursue a comprehensive approach to ergonomics that might include a new rule that responds to some of the criticism aimed at the most recent version. In fact, several Republican senators who voted to repeal the standard stated that they would not oppose a better version of the OSHA rules.

What this means: For the time being, employers need not worry about compliance with the OSHA

ergonomics rules. However, it is likely that sometime during the Bush administration we will see a pared down version of the rules revived. Therefore, it may be best to store, rather than destroy, any compliance planning that you may have worked on over the last few months.

Additionally, although we have heard no suggestion of this possibility, it is not inconceivable that the California Legislature could seek to use the now defunct OSHA rules as the basis for statewide ergonomics regulations. Hopefully, they will simply leave this matter to their federal counterparts.

If you have any questions about this or any other topic, please contact Mike Sullivan (msullivan@paulplevin.com) or at (619) 744-3655 at Paul Plevin & Sullivan.

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