

Question of the month: What is the status of the new ergonomics rule change? Am I going to have to count hammer strokes any time soon?

### **And the Beat Goes On**

#### **Advisory Committee continues the ergonomics debate, but the endgame is uncertain.**

It was a robust debate this month, with plenty of cogent comments from advocates for and against revising California's groundbreaking ergonomics standard. The question is, to what end?

The Advisory Committee was authorized by the Cal/OSHA Standards Board to listen to input from the stakeholders and consider proposed changes to General Industry Safety Orders §5110 - Ergonomics, recommended by the Labor Fed, proposed language drafted by the Division of Occupational Safety and Health (DOSH) and possible administrative solutions to enforcement of the standard.

Those who favor keeping the state's controversial-but-court-tested standard as is (employer groups) believe they have shown the lack of consensus that will put regulatory changes to rest. On the other hand, those advocating revising the rule (labor stakeholders) are looking for other ways of tackling the issue including an attempt to write ergonomics language into new Worker's Compensation legislation.

Employer groups and even some labor organizations oppose revising §5110 because, among other reasons, the proposals would abolish the regulation's two-injury trigger for enforcement and a provision that puts the onus on DOSH to prove an employer should have taken other measures to correct ergonomics problems. (This is known as the "safe harbor" provision.)

Construction labor groups say the proposals amount to "one size fits all" solutions that don't apply to that industry.

A group of employers known as the Construction Ergonomics Coalition submitted comments to the committee stating, "the existing regulation provides checks and balances for preventing repetitive motion injuries in California workplaces." The coalition includes 16 organizations, including the Associated General Contractors of California, the California Framing Contractors Association, the Western Steel Council and the District Council of Iron Workers who oppose the changes because of the negative impact they could have on construction trades.

But supporters of changes to §5110 contend that the standard is seriously flawed and must be changed to protect workers from crippling injuries. Section 5110's injury-based trigger is a major flaw and the regulation should be based on a preventive approach, they say, and not depending on a two injury trigger to take remedial action. "Injury triggers inevitably lead to under reporting and over reporting. We need a preventive standard based on risk factors."

According to employer groups, the problem with diagnosing and preventing an ergonomics injury is not like toxic exposures where PELs are set already or where fall protection requirements are well defined. It depends on a lot of other things besides the motion that the worker is doing. One risk factor might be the aging workforce where people have been doing the same work for 10 years. Fix their jobs, but a year later they have shoulder surgery because they finally gave out. Another might be non-work related activities. Risk factors are not yet well enough defined to target "high risk groups" such as construction workers.

There is even a faction that discounts the scientific evidence regarding ergonomic solutions and asserts that "psychosocial" factors play a large role in ergonomics program success stories.

Still another faction, labor interests I would assume, propose that enforcement problems can be handled by citing employers and using the appeals process to "find out what the flaws are." And so it goes.

I hope someone will consider the effect another flood of ergonomic claims on our already devastated Worker's Comp system.

The Standards Board will meet again soon on this important issue so there will definitely be more to come.

Someone once told me that a camel is a racehorse designed by committee. We'll have to wait and see on this one.

For a copy of the current ergonomics standard, Title 8, GISO §5110, go to the Cal/OSHA website at [www.dir.ca.gov](http://www.dir.ca.gov) and then to the DOSH home page or call me at 619 523-4859 for an email copy.