

CITATION OF ERGONOMIC HAZARDS UNDER THE “GENERAL DUTY CLAUSE” - AN UPDATE

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Abstract: In 2005 a summary of “General Duty Clause” citations issued for ergonomic hazards was published (Purswell & Purswell, 2005). That summary showed that the primary area of ergonomics citation activity under the “General Duty Clause” (paragraph (5)(a)(1) of the OSHAct of 1970) by OSHA to that point had been concentrated in nursing homes, peaking in 2002 and 2003. The OSHA citation activity since that time has shifted and only one ergonomics-related citation has been issued to nursing homes in the last six years. OSHA citation of ergonomic hazards under the “General Duty Clause” has been most active in Puerto Rico (a “state plan” jurisdiction). The table below summarizes the citations issued. It includes one duplicate ([305829970](#) and [305829988](#)). The list below also contains a citation related to the operation of cranes ([310754726](#)) which appears to have been misclassified as an ergonomic hazard. Finally, the list contains a citation which was subsequently deleted ([311186357](#)). The patterns in the remaining citations are discussed.

1. INTRODUCTION

Musculoskeletal disorders (MSDs) continue to be a significant source of lost time injuries and a major driver of Workers' Compensation costs. In 2007, MSDs accounted for 29 percent of all workplace injuries requiring time away from work, down from 30 percent in 2006. In terms of actual number of musculoskeletal injury cases, there was a decline of 21,770 cases or 6 percent (Bureau of Labor Statistics, 2008). It therefore appears that the US is making progress in reducing the total number as well as the rates of ergonomic injuries, but musculoskeletal injuries still comprise a large proportion of lost-time injuries.

2. CITATION OF ERGONOMIC HAZARDS UNDER THE “GENERAL DUTY” CLAUSE

In order to carry out its Congressional mandate to protect workers, the federal Occupational Safety and Health Administration has been citing companies with employees exposed to ergonomic hazards under the “General Duty” clause since the 1990's. The “General Duty” clause of the 1970 OSHAct reads as follows:

“Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;”

Most OSHA citations of employers are based on the violation of a specific OSHA regulation as contained in 29 CFR 1910 and 1926. However, the issue of a regulation to address ergonomics hazards has been the subject of much controversy and the standard which was promulgated by OSHA in 2000 was subsequently stayed from enforcement by Congress. In addition to nullifying the Ergonomics Program Standard, the Act prohibits Federal agencies from subsequently promulgating any new regulations which are substantially similar to the previous rule (Congressional Review Act, Public Law PL 104-121, 1996).

In reality, the name “ergonomics standard” was a misnomer. The standard which OSHA produced was primarily directed to the prevention of cumulative trauma with much controversy concerning the relationship between certain repetitive work tasks and the resulting injury to the worker. Other ergonomics hazards were not addressed by the standard. Thus, OSHA can only address such injuries with the “General Duty Clause”, rather than with the specific standard which was stayed in enforcement by Congress.

In 1997, the Occupational Safety and Health Review Commission (OSHRC) specifically ruled that OSHA could cite employers under the General Duty clause for ergonomic hazards (OSHRC, 2011) and has upheld several contested citations of ergonomics hazards. In reviewing the citations issued by OSHA for ergonomics hazards, the OSHRC has applied the same criteria it applies to reviewing other citations issued for violations of the General Duty Clause.

However, as we noted shortly after the rescission of the Ergonomics Program Rule (Purswell & Purswell, 2001), OSHA retained the ability to issue citations of ergonomics hazards under the General Duty clause and suggested that OSHA might consider simply continuing its previous policy on ergonomics hazards. OSHA did in fact renew its policy of citing ergonomic hazards under the General Duty clause. It also published a series of non-binding guidelines on good practices with respect to ergonomics for several industries. (OSHA, 2011)

In order to have a citation of a hazard under the General Duty clause upheld, OSHA must show the following four things (OSHRC, 2011a):

1. A condition or activity in the employer's workplace presents a hazard to employees,
2. The cited employer or the employer's industry recognizes the hazard,
3. The hazard is causing or likely to cause death or serious physical harm, and
4. Feasible means exist to eliminate or materially reduce the hazard.

3. RECENT CITATION ACTIVITY OF ERGONOMIC HAZARDS

Since the last summary of OSHA's citation of ergonomics hazards under the General Duty clause the pattern of citations has shifted. As Table 1 below shows, citation activity has been most intense in Puerto Rico and the type of work being performed is most commonly computer related work.

4. THE FUTURE OF ERGONOMICS CITATION ACTIVITY

The history of OSHA citations in the nursing home industry, together with the increase in citations for computer work suggests near future of OSHA activity with respect to ergonomics hazards. The strategy adopted by OSHA of publicizing the guidelines developed for nursing homes seems to have succeeded in disseminating ergonomics awareness and knowledge to the nursing home sector and eliminating or ameliorating ergonomics hazards in that industry. In the absence of a specific ergonomics program rule, OSHA may pursue the same strategy with office workers for abating the ergonomics hazards that may be present in their work.

It should be noted that OSHA has made available an “etool” since 2003 to provide guidance on the selection and configuration of computer workstations (OSHA, 2011b). In its citations for ergonomic hazards pertaining to poorly fitted computer workstations to date, OSHA has not referenced its own “etool” on how to properly configure a computer workstation very frequently, even though the tool has been available since 2003. This etool also includes checklists for verifying that the workstation is appropriately configured for the particular operator.

Finally, it should be noted that approximately half of the states operate their own safety and health plan under the OSHAct. These states may have enacted a specific regulation dealing with ergonomics hazards and citations of ergonomics hazards may be occurring, but data are not readily available for these citations. California is an example of such a state with an ergonomics hazards standard. Washington's state OSHA (WISHA) also promulgated an ergonomics regulation, but it was later rescinded by a voter referendum. WISHA has since pursued a “Guidelines approach” like federal OSHA.

The small number of federal citations as documented in the table above suggest one of two conclusions. One is that progress has been made in reducing the number of workplaces where cumulative trauma is a problem, and the other is that OSHA's enforcement in using the General Duty Clause is limited at the present time.

Table 1. OSHA Citations of Ergonomic Hazards by Inspection Type, Year, State and by NAICS

Inspection Number	Inspection Type	Year	State	Work type	NAICS
313977134	Complaint	2010	NV	Manual Material Handling	493110
311391163	Complaint	2010	PR	VDT work	624190
313780520	Planned	2009	OH	Leather sewing of baseballs	339920
313520041	Planned	2009	OH	Warehouse operations	493110
309855625	Complaint	2010	PR	Elementary Teachers	611110
311223796	Complaint	2009	PR	VDT work	485113
311760789	Planned	2009	CT	Patient transfers	623110
312486020	Planned	2009	PA	Mushroom growing	111419
311189195	Complaint	2009	PR	VDT work	921130
311186357 (deleted)	Complaint	2008	PR	VDT work	721120
310754726	Planned	2008	NY	Crane operations	336350
311185920	Complaint	2008	PR	Manual Material Handling	424430
112520143	Planned	2007	ME	Factory assembly line work	336611
310185228	Planned	2007	CT	Patient transfers	623110
307965574 (deleted)	Referral	2007	PR	VDT work	921130
308166222	Complaint	2007	PR	VDT work	624310
308166164	Complaint	2007	PR	VDT work	334111
308166230	Complaint	2007	PR	MMH	445110
311080394	Complaint	2007	MN	VDT work	921190
308164052	Complaint	2007	PR	VDT work	541820
307930610	Complaint	2006	PR	VDT work	488490
307930602	Complaint	2006	PR	VDT work	541513
307930818	Complaint	2006	PR	Manual Material Handling	339991
305829970	Complaint	2005	PR	Bike use by Security	541990
305829988 (deleted, duplicate of 305829970)	Complaint	2005	PR	Bike use by Security	444190

6. REFERENCES

- Bureau of Labor Statistics (2008) *Musculoskeletal disorders and days away from work in 2007*, accessed on 4/27/2011 from <http://www.bls.gov/opub/ted/2008/dec/wk1/art02.htm>.
- Congressional Review Act, (1996), accessed on 4/27/2011 from <http://usgovinfo.about.com/library/bills/blcra.htm>.
- OSHA (2011) “*Ergonomics Guidelines*” accessed on 4/27/2011 from <http://www.osha.gov/SLTC/ergonomics/guidelines.html>.
- OSHA (2011a) *OSHA Ergonomics Program Final Rule*, accessed on 4/27/2011 from http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=16311.
- OSHA (2011b) *OSHA Computer Workstation etool*, accessed on 4/27/2011 from <http://www.osha.gov/SLTC/etools/computerworkstations/index.html>.
- OSHCRC, (2011) *Commission decides ergonomics hazards citeable under the “General Duty Clause”* accessed on 4/27/2011 from <http://www.oshrc.gov/press/r97-3.html>.
- OSHCRC (2011a) “OSHCRC Docket No. 77- 2847”, accessed on 4/27/2011 from http://www.oshrc.gov/decisions/html_1983/77-2847.html
- Purswell, J.P. and Purswell, Jerry L., (2001) “OSHA’s Citation Practices of Ergonomic Hazards under the ‘General Duty’ Clause.” *Proceedings of the Human Factors and Ergonomics Society 45th Annual Meeting – 2001*” p. 1110.

Purswell, J.P. & Purswell, J.L. (2005) "OSHA's Recent Citation Practices of Ergonomic Hazards under the 'General Duty clause.'" *Proceedings of the XIX Annual International Occupational Ergonomics and Safety Conference, Las Vegas, Nevada.* 421-424.