



## BRIEFLY

The state Department of Labor and Industries has adopted an ergonomic rule, which it claims will save employers money. The business community doesn't believe it.

Employers think the rule will cost them millions of dollars more than L&I says it will. They also question the scientific underpinnings of L&I's rule. "Scientists don't agree on precisely what causes or prevents" stress and strain injuries, says the Association of Washington Business.

L&I nevertheless asserts that its rule is supported by compelling, if not conclusive, scientific studies. The department concedes that its rule will not necessarily protect any specific worker, but predicts that for employees collectively, the rule will reduce the overall rate of workplace injuries.

Employers argue that if L&I could demonstrate that the rule is cost-effective for them, they would gladly go along with it.

# State Issues Ergonomic Rule, Business Objects

Claiming to have answered all objections from the business community, the state Department of Labor and Industries on May 26 issued an ergonomic rule. L&I contends that rule is good for businesses, but employers fear it will cause them much more trouble and cost them many more millions of dollars than the department estimates.

Essentially, ergonomic regulation is about fitting the workplace to employees. The stated objective of the rule is to reduce workplace injuries such as back strain, tendonitis and carpal tunnel syndrome, which L&I maintains are caused by such activities as awkward lifting and repetitive motion.

Among other things, the rule requires employers to identify specified workplace ergonomic hazards – such as intensive keying more than four hours a day, and working with hands above the head more than two hours a day – and to reduce employee exposure to below hazardous levels.

Employers must do this only if it is "technologically and economically feasible." But L&I inspectors – or more likely the courts – will have the final say on what's feasible.

L&I's benefit-cost analysis estimates that the ergonomic rule will yield annual social benefits worth \$340.7 million while imposing \$80.4 million in annual compliance costs on employers, for a benefit-cost ratio of 4.24.

Nearly half of the estimated benefits would accrue to employers in the form of reduced workers compensation expenses, avoided costs for recruiting and training replacement employees, higher worker productivity, and so forth. L&I figures the ergonomic rule will save employers more than \$2 for every \$1 it costs them.

But as widespread opposition to the rule in the business community makes clear, many employers don't believe L&I. A coalition of Washington employers, WE CARE, points up a study by the California consulting firm M. Cubed that concludes the rule will cost employers \$725 million per year, much more than the department's estimate.

L&I, however, has rejected M. Cubed's analysis as "seriously flawed."

The Seattle law firm Perkins Coie predicts the new rule will affect virtually every business in Washington. "The new ergonomic rule will no doubt become not only the largest and most costly safety program in L&I's history, but probably the most confusing and unwieldy to implement," says Perkins partner Bruce Cross.

Employer groups are weighing what strategy to adopt for a lawsuit aimed at overturning the rule. That they will file a suit seems close to certain.

108 S. Washington St., Suite 406

Seattle WA 98104-3408

PH 206-467-7088

FX 206-467-6957

[www.researchcouncil.org](http://www.researchcouncil.org)



Short of a successful lawsuit, the best hope employers have at least to modify the rule may lie with the voluntary rule-demonstration projects that L&I proposes as means to identify effective and workable ways – “best practices” – for employers to comply with the rule.

On direction of Gov. Gary Locke, L&I plans to create a blue-ribbon panel of independent experts to assess the effectiveness of the rule and to ensure that the rule’s requirements are “understandable and the proposed enforcement policies are fair and consistent,” says L&I director Gary Moore. “We will not enforce the rule until this panel has determined that effective educational materials are widely available and demonstration projects are successful.”

Employer groups urged L&I to tackle ergonomic injuries in ways other than by adopting a rule. Carolyn Logue, state director of the National Federation of Independent Business, says the problem “could be adequately solved through an education program alone, because there are financial incentives for employers to reduce expensive, repetitive-motion injuries.”

The Association of Washington Business asked L&I to do pilot programs before adopting a rule. AWB promised that its members would voluntarily undertake such programs in every employment sector. “We all share the common goal of protecting employees from workplace injuries,” said AWB president Don Brunell. “But L&I cannot show that this rule would prevent a single injury. It’s just common sense to make sure something works before you spend three-quarters of a billion dollars on it.”

L&I responded that it has done much to encourage voluntary control of ergonomic hazards during the past 10 years by providing information and technical assistance, but that according to the department’s survey of some 5,000 employers, 60 percent of Washington businesses have done nothing to control these hazards.

L&I says it “believes that increased training, education, technical assistance and pilot projects would be useful and would encourage some additional employers to address WMSDs (work-related musculoskeletal disorders) but that significant numbers of employees would still go unprotected.” And absent a rule, there’s little the department can do push the most recalcitrant employers into taking protective measures.

As for pilot programs, L&I says, “pilot rulemaking is best suited to situations where an agency intends to issue a highly specific, inflexible and experimental regulation and feasibility of compliance is uncertain. In this case, however, the department decided to move ahead with a proposal which was highly performance oriented, included flexible choices of compliance, was based on sound scientific principles and data, and incorporated the notion of feasibility as a self-limiting factor. L&I concluded that a rule designed in this manner would not benefit from pilot testing.”

The business community disputes L&I’s contention that the ergonomic rule is based on sound science, arguing that there’s no scientific consensus on the causes of ergonomic injuries.

According to M-Cubed, quality information about ergonomics is hard to find. Generally, standard methodologies across work places have not been developed, and no single intervention is universally effective. For instance, public health



experts examining upper body injuries have found that prevention of diseases and their recurrences probably requires changes in work conditions. Yet for now there is not much scientific basis for these measures. In some economic sectors – particularly service industries – no interventions specific to the industry are available in the research literature on uniform ways to reduce claims for cumulative injuries. Some experts believe that the entire quest to develop equipment that solves all worker health issues is quixotic. The problems associated with chair sitting, for example, will never be completely resolved by following ergonomic guidelines. Ergonomic science is at best partial and at worst confused and even silly.

To which L&I replies that the department “has conducted an extensive review of the scientific literature and believes that the best available evidence provides strong and compelling evidence supporting this rule.”

L&I says well-designed, peer-reviewed and published scientific studies support each of the hazardous-exposure levels that employers must control. And it’s irrelevant whether employees do things off the job that may cause or contribute to injuries, and whether they are old or young, weak or strong. It’s L&I’s view “that many MSDs are caused or aggravated by work and that the elimination or reduction of certain specific hazards at work will in turn result in a substantial reduction in these WMSDs.”

But if it’s so certain that L&I’s rule will reduce injuries as cheaply and effectively as L&I claims, it stands to reason that employers would embrace it, not fight it.

Nationally, employers are saying the same thing about the federal ergonomic rule recently adopted by the Occupational Safety and Health Administration, which insists that “employers should support an ergonomic standard because it would save them money.”

There’s no way the government can guarantee this, argues the National Coalition on Ergonomics, a group of some 300 companies and associations, including the National Federation of Independent Business and the U.S. Chamber of Commerce. “If there were any real evidence this were true, the employer community would support an ergonomic standard. This is the very crux of the problem. There is simply no assurance an ergonomic regulation across industries and workplaces will prevent a single injury.”



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