

## Proposed OSHA “MSD” Recordkeeping Rulemaking – Precursor to Broad Ergonomics Regulation

### Overview:

- On January 29, OSHA proposed changes to its recordkeeping rules that would add a new column to OSHA 300 logs and require employers to track “work-related” musculoskeletal disorders (MSDs). The proposal also contains an overly broad definition of recordable “MSDs” which significantly expands which conditions must be captured on employer logs.
- Ten years ago, OSHA had proposed a similar definition of MSDs in conjunction with efforts to develop a workplace ergonomic standard. The ergonomics standard was rejected by Congress in 2001, while the separate MSD definition was not fully implemented as a result of a settlement agreement reached by the National Association of Manufacturers (NAM) and the Department of Labor in 2001.
- OSHA insists that the proposed rulemaking will simply require employers to “check a box” on their OSHA 300 logs. However, the proposal is much broader in its scope. As proposed, this rulemaking would require employers to treat subjective symptoms as potential recordable incidents. OSHA has not justified the reason for the new definition, and there is no evidence that the science of MSDs and issues related to such disorders have changed to warrant this revised definition
- While this proposal is not an ergonomics standard, it is evidence of OSHA’s interest to pursue broader ergonomics regulation by collecting data that will likely yield inaccurate and overstated results.

### Impact

- The definition of an MSD used in the proposal is overly broad and will yield inaccurate data regarding the work-related connection to recordable incidents. In turn, this may result in misguided policymaking. Employers will face significant additional burdens that include increased medical evaluations and targeted OSHA inspections (and subsequent citations.)
- If implemented, this new requirement will put employers in the position of making medical determinations regarding the “work relatedness” of potential MSDs. MSDs involve a complex combination of factors that are manifested in a grouping of various disparate conditions that are often difficult for even medical professional to determine. OSHA’s actions will result in significant costs of referring employees to health care providers to assist in making these determinations.
- The proposal undermines employers’ efforts to engage in preventative work-transfers. The proposed rulemaking would reverse aspects of the NAM settlement agreement, which deemed that employers did not need to record minor musculoskeletal discomfort if a healthcare professional determines an employee can perform all routine job functions and the employer makes work assignments to prevent a more serious condition from developing.
- OSHA has inaccurately assessed the impact and cost of compliance. This proposal will require extensive compliance efforts because the overly broad definition of MSD will demand a new and subjective recordkeeping of highly complicated physical conditions.

### NAM Efforts

- The NAM and other employer groups have joined to respond to the proposed rulemaking on behalf of the employer community.
- The comments that were submitted in March 2010 included our objections to the legal grounds behind the proposal, the science used to justify the proposal, the economic costs of compliance and the impact of the reversal of the NAM settlement agreement.