

An Overview of Initiative 841, to Repeal the Ergonomics Rule

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On November 4th voters in Washington will be asked whether the state's latest set of rules regulating the workplace, called the ergonomics rule, should be repealed. Unlike past ballot measures, Initiative 841 does not seek to make new law. Its goal is to reverse a regulatory action taken by a state agency without the specific direction of the legislature. This is the only statewide initiative that will appear on the ballot this year.

Opponents of I-841 say the ergonomics rule will reduce workplace injuries and save money through lower workers' compensation claims. I-841 supporters argue the rule is unnecessary and that its complexity and cost will contribute to job losses and will damage Washington's business climate.

Ergonomics regulations were issued for all states during the Clinton Administration, but Congress repealed them in 2001. Washington and California are the only states to impose their own ergonomics regulations.

What Initiative 841 Says

The text of Initiative 841 contains four sections. Section 1 provides that it is state policy to aid businesses in creating new jobs. It notes that members of both parties in the legislature have introduced bills for repealing the ergonomics rule, and predicts that Initiative 841 will "aid in creating jobs and employing the people of Washington."

Section 2 says that state ergonomics regulations, identified as Washington Administrative Code 296-62-05101 through 296-62-05176, are repealed. It further

provides that the Director of the Department of Labor and Industries shall not issue new ergonomic rules except to comply with federal law. Sections 3 and 4 direct the courts on how I-841 should be interpreted.

Recent Trends in Workplace Safety

Washington's ergonomics rule is intended to improve safety for workers, so it makes sense to assess it in light of what is already happening in workplace safety.

Workplace safety has improved dramatically over the years. In the 1930s, injuries on the job killed 38 employees per 100,000 people employed. Today, workplace fatalities have been reduced by 90%. Nationally, workplace ergonomic disorders have declined 26% over the last ten years. Washington has shared in this trend. Ergonomic injuries in our state have fallen more than 24% just since 1996. For example: back disorder claims fell 19%; Carpal tunnel syndrome claims fell 27%; neck and arm disorder claims fell 16%.

Supporters of Initiative 841 say the falling injury rate shows the mandatory ergonomics rule is not needed, and that it may discourage employers from continuing voluntary workplace safety programs.

Existing Workplace Safety Law

Existing law sets specific standards for workplace safety. Thirty-eight separate sections of Title 49, Chapter 17 of the Revised Code of Washington set out definitions of safety, the rights of employees and the penalties imposed on employers for not providing a safe workplace. Every employer is required to "furnish to each of

his employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death.” In addition, current state safety rules must meet or exceed federal standards.

Short Description of the Ergonomics Rule

By any measure the state ergonomics rule that I-841 seeks to repeal is extremely complicated. The Concise Explanatory Statement alone is 126 pages, plus three appendices.

The rule states that it “applies to all industries and workplaces of all sizes, but specific employers are covered only where defined exposures are found.” All workplaces in the state are potentially covered, so all employers must be aware of and comply with the ergonomics rule.

Because the rule is so broad, inspection and enforcement will necessarily be selective and is solely at the discretion of the Department of Labor and Industries. While the rule will not apply in many work situations, in practice employers can never be sure just when it might be enforced in their particular place of business.

The rule applies to “caution zone jobs.” These are defined as jobs that require work activities such as lifting, bending, squatting, kneeling, bending the head or wrist, high hand or arm vibration, or lifting arms above the shoulders.

Employers with “caution zone jobs” must identify those with work-related musculoskeletal disorder (WMSD) hazards that must be reduced. A WMSD hazard is “a physical risk factor that by itself or in combination with other physical risk factors has a sufficient level of intensity, duration or frequency to cause a substantial risk of WMSDs.”

In order for employers to ensure they will not be fined, they must reduce or remove any WMSD physical risk factors. For example, to insure avoidance of a WMSD

hazard, employers must make sure workers do not:

- Work with hands above the head more than four hours a day.
- Work with back bent forward more than 30 degrees more than four hours a day.
- Work with the neck bent more than 45 degrees more than two hours a day.
- Work squatting more than four hours a day.
- Bend wrists more than 30 degrees more than three hours a day.
- Grip an object weighing more than 10 pounds more than three hours a day.
- Pinch an object weighing more than two pounds more than three hours a day.

These limitations mean many current full-time employees may only be allowed to work three or four hours a day, resulting in a significant cut in their personal income.

Severe Penalties for Violations

The rule states that it must be implemented “to the degree feasible,” but that does not provide a legal defense for employers. The law says state regulators, not employers, will decide what is feasible.

The consequences for violating the rules are severe. For an ordinary violation penalties range up to \$7,000. Violations the Department deems more serious are subject to fines of \$70,000 per infraction.

Conclusion

Government regulations often produce unexpected and undesirable outcomes. The ergonomics rule represents a vast increase in the regulation of business, and it will be up to voters to decide whether the potential benefit outweighs their cost and complexity.

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