

Advocacy Recommends That OSHA Reassess the Costs of its Proposed MSD Reporting Rule on Small Business

On March 30, 2010, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Occupational Safety and Health Administration (OSHA) on OSHA's *Proposed Occupational Injury and Illness Recording and Reporting Requirements Rule (MSD Reporting Rule)*. [75 Fed. Reg. 4728 (January 29, 2010)]. OSHA's proposed rule would require employers with 10 or more employees (unless exempt) to record certain work-related musculoskeletal disorders (MSDs) in their OSHA 300 Log. An OSHA 300 Log is a record of work-related injuries and illnesses that certain employers are required to maintain.

MSDs are defined by OSHA as disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs (e.g., carpal tunnel and rotator cuff syndrome, herniated spinal disc, low back pain, etc.), but do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. The agency states that the proposed rule would simply require employers to check a new MSD box on their OSHA 300 Log and that employers are already required to report this information on the current form. As such, OSHA concludes that compliance with the proposed rule would involve five minutes per employer to become familiar with the new rule and one minute per MSD injury or illness to check the new box.

A complete copy of Advocacy's letter to OSHA is available at: www.sba.gov/advo/laws/comments/.

- Small business representatives believe that OSHA has understated the cost and complexity of complying with the proposed rule. For example, many small businesses will have to hire attorneys and consultants to advise and train them on the new requirements, engage in additional consultation with the employee, consult with medical professionals, and make complex medical evaluations they are not qualified to make.
- Small business representatives are concerned that small businesses could be held in violation of OSHA recordkeeping rules if they misdiagnose and improperly record a MSD. Others noted that many small businesses do not have qualified human resource specialists on staff as OSHA assumes in its analysis.
- OSHA certified under the Regulatory Flexibility Act (RFA) that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, the agency did not convene a small business review panel (commonly known as a "SBREFA Panel") to consider the impact of the proposed rule. However, based on small business concerns about the proposed rule, Advocacy recommends that OSHA reassess its cost assumptions and RFA certification before proceeding.

For more information about the proposed rule, please visit Advocacy's Web page at www.sba.gov/advo or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 (or bruce.lundegren@sba.gov).