

## Ergonomic Compliance with the General Duty Clause of the OSH Act

### Complying With Ergonomics Rules Under the General Duty Clause of the OSH Act

Federal ergonomic laws in the United States can be difficult to interpret due to the complex nature of workplace safety regulations. In 2000, the Occupational Safety and Health Administration (OSHA) adopted rules to specifically address ergonomics hazards — but the following year, Congress used an obscure law to block the introduction of the ergonomics standards and prevent similar rules from being introduced in the future.

Without explicit ergonomics standards on the books, OSHA turned to a broader rule to enforce safe practices: the General Duty Clause of the OSH Act of 1970. Section 5(a)(1) of the General Duty Clause requires employers to keep their facilities “free from recognized hazards that are causing or are likely to cause death or serious physical harm” to employees.

Today, OSHA uses the General Duty Clause to cite employers that subject workforces to ergonomic hazards. As its language implies, however, the Clause is a fairly blunt legal tool that requires a high burden of proof. Many employers remain confused as to how OSHA applies this broadly-worded rule.

This article will provide a brief introduction to OSHA’s treatment of ergonomic issues, along with a few suggestions for employers to avoid triggering a citation. Of course, only an attorney trained in workplace safety issues can give adequate legal advice; that is not our intent here. Our goal is to provide useful details regarding the law’s common implementation, as well as general tips that can improve ergonomic practices in a workplace. For more information on compliance with any OSHA regulation, contact your state’s local OSHA office.

### Industrial Businesses and the Costs of Poor Ergonomics

The science of ergonomics looks for ways to make work easier on a worker’s body, with the goal of finding ideal combination of techniques and equipment that will prevent injuries while maintaining peak efficiency.

Increasingly, ergonomic factors are considered a leading risk of workplace injury, and while many businesses have adopted better ergonomic practices to reduce these injuries, the need for improvement remains. Musculoskeletal disorders — the hallmark of poor practices — accounted for a full third of all injury and illness cases in the United States in 2013.

As ergonomic science reveals more of the root causes of workplace injury, some managers may feel some anxiety regarding the application of federal safety regulations. After all, penalties for a violation can be significant.

This table provides an overview of allowed penalties:

OSHA Civil Penalty Ranges		
Violation Class	Minimum Penalty	Maximum Penalty
“Posting Requirements”	\$100	\$7,000
“Serious”	\$100	\$7,000
“Other-Than-Serious”	\$0	\$7,000
“Willfull or Repeated”	\$5,000	\$70,000
“Failure to Abate”	\$1,000 per day, unadjusted	\$7,000 per day

Figure 1: OSHA penalty fine ranges. Source: OSHA’s Field Operations Manual.

The issue of ergonomics citations is particularly important in warehousing and material handling industries, where many standard work tasks carry an increased risk of musculoskeletal disorders. Noted risks include:

- Awkward body positioning
- Improper task design
- Repetitive motions
- Manual lifting of excessively heavy loads
- Workstation height that requires frequent reaching
- Excessive manual material handling

The good news is that technology is keeping up with the medical research, and with the right assortment of material handling equipment — lift tables, carts, forklift battery changers, and more — every operation can keep employees safe while avoiding OSH General Duty Clause violations.

In order to gauge the risk of citation, managers should examine the ways that OSHA has responded to ergonomic hazards in the past. The following timeline provides a quick overview of the legal standing of ergonomic practices in the United States.

## OSHA and Ergonomics: A Legal Timeline

- 1970 - The OSH Act of 1970 passes, creating OSHA and its standards. The Act does not mention ergonomics by name.
- 1990 - OSHA establishes an Office of Ergonomics Support.
- 1997 - The Occupational Safety and Health Review Commission (OSHRC) rules that the General Duty Clause of the OSH Act can be used to issue citations for ergonomic hazards.
- The case involved a national baked goods company. OSHA cited them for allegedly failing to address hazards related to repetitive motion and manual lifting in its Pennsylvania facility. The original citations were issued in 1988.
- In 1993, a Commission Judge dismissed the 175 alleged repetitive motion violations, eventually leading to the 1997 Commission review that officially recognized use of the General Duty Clause in ergonomics cases.
- Though this historic case marked the first use of the General Duty Clause to address an ergonomic hazard, the newborn legal maneuver fizzled. The OSHRC upheld the original judge's rejection of the 175 alleged violations, finding that the Secretary of Labor failed to provide sufficient means of abatement to the company.
- 1999 - OSHA publishes a comprehensive standard that directly address ergonomic conditions in U.S. workplaces.
- 2000 - OSHA issues its final, updated version of the Ergonomics Program.
- 2001 - Senate Joint Resolution 6 is passed into law, eliminating the OSHA Ergonomics Program. The Congressional Review Act (CRA) prohibits agencies from reissuing a rule once it is struck down.
- In fact, agencies are prohibited from issuing rules that are similar to those denied under the CRA — which means that OSHA may never be able to introduce standards directly related to ergonomics.
- 2002 - After 11 years of legal wrangling, OSHA settles with a national chain of assisted living centers. A victory for OSHA, the settlement requires the company to supply staff with lifting devices.
- 2009 - Using the General Duty Clause, OSHA issues a citation to a Connecticut healthcare company. The citation alleges that nursing assistants at the firm suffered an unusually high rate of shoulder and back injuries due to ergonomically-unsound lifting practices.
- A few months later, the company settled for a \$1,000 dollar fine (OSHA was seeking \$3,500.)
- Meanwhile, OSHA officials tell labor leaders that the agency will increase its reliance on the General Duty Clause in an effort to reduce rates of musculoskeletal disorders.
- 2011 - OSHA issues an ergonomics citation to a bottling plant in Ohio. The citation alleges that the company required workers to manually transport heavy loads and to access ergonomically risky shelving. The company eventually paid a \$4,500 fine.
- 2012 - Stopping short of issuing an official citation under the General Duty Clause, OSHA replies to complaints of ergonomic hazards at a major hotel chain with a letter discussing the risks and possible solutions.

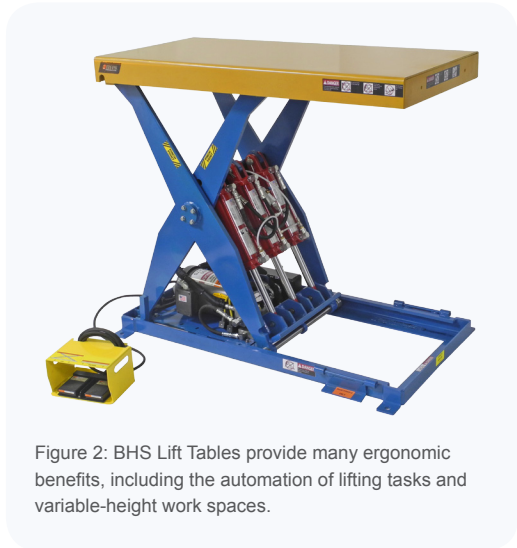


Figure 2: BHS Lift Tables provide many ergonomic benefits, including the automation of lifting tasks and variable-height work spaces.

## OSHA Requirements and Ergonomics

As the history shows, operations will not be targeted for OSHA citation as long as they responsibly address any ergonomic hazards that come to light. In many ways, OSHA's history of limiting ergonomic hazards has revealed the potential weakness of the General Duty Clause in these types of cases.

Between 2009 and 2011, OSHA only issued three ergonomics citations under the General Duty Clause. Trade journal HR Focus suggests that this limited attack on ergonomic hazards is due to the high burden of proof associated with the Clause.

Basing the legal standard on the language of the Clause itself, OSHA investigators inspect each of four criteria before issuing a citation. If they do issue a citation, they may have to defend their proof of each point before the OSHRC. Before issuing a citation for an ergonomics violation, OSHA considers whether it can show that:

1. An ergonomic hazard exists within the workplace.
2. Employers recognize that the hazard exists.
3. Serious injuries are resulting, or are likely to result, from the hazard.
4. Employers could implement realistic methods of eliminating (or at least reducing) the hazard.

Each of these four steps creates its own set of legal difficulties, and it may be that the burden of proof is simply too high in many ergonomics cases. However, citations are only one of the many ways OSHA responds to ergonomic hazards. If they find evidence of ergonomic risks at a worksite, they may simply issue a hazard alert letter, following up with later investigations.

## OSHA Recommendations on Ergonomics

For employers with fears about possible citations, OSHA provides a detailed list of recommendations to keep workplaces "free from recognized hazards," thereby complying with the law. OSHA's discussion of ergonomics reflects some of the most advanced research on the subject.

While they are not legally binding, OSHA guidelines are worth considering for every operation; after all, implementing a strong ergonomics program is not just good for worker health, it can also promote efficiency and lead to significant productivity gains.

Currently, OSHA publishes detailed ergonomics guidelines for the following specific worksites:

- Meatpacking plants
- Foundries
- Nursing homes
- Shipyards
- Grocery stores
- Poultry processing facilities

The information published in the OSHA guides is relevant to many applications outside of the targeted subject area. Many of the guidelines found there can be easily applied to warehousing operations without significant alteration.

## Conclusion: Staying Compliant with the General Duty Clause of the OSH Act

On their public website and in the press, OSHA has been very clear about the sorts of violations that trigger citation. The agency does not focus on employers who make "good faith efforts" to respond to ergonomics issues at their worksites.

Essentially, as long as employers respond to safety threats, eliminating or mitigating them as they are discovered, they have nothing to fear from OSHA. Typically, only companies that fail to address hazards after sufficient notification receive citations.

With advanced material handling equipment and a comprehensive ergonomics training program, every operation can enjoy better safety and the peace of mind that comes with full OSHA compliance.

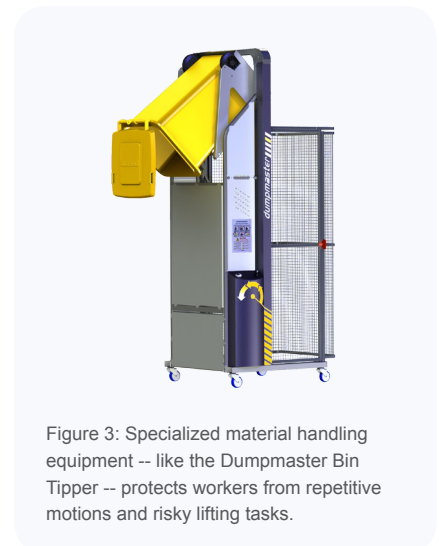


Figure 3: Specialized material handling equipment -- like the Dumpmaster Bin Tipper -- protects workers from repetitive motions and risky lifting tasks.

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