

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE
- LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

## WARNING: EEOC HOT ON TRAIL OF DISCRIMINATION IN HEALTH PLANS

The U.S. Equal Employment Opportunity Commission (“EEOC”) issued a regulatory opinion on December 14, 2000 that it is a violation of Title VII, as amended by the Pregnancy Discrimination Act, to exclude contraceptive drugs and devices if your health plan covers other types of preventive products or services. While the opinion of the EEOC does not carry the weight of law, it may be influential to a federal court considering the issue. Specifically, the EEOC has taken the position that you must cover the expenses incurred by your employees for prescription contraceptives to the same extent, and on the same terms, that you cover the expenses of the type of drugs, devices, and preventive care identified below:

- Vaccinations;
- Drugs to prevent development of medical conditions, such as those to lower or maintain blood pressure or cholesterol levels;
- Anorectics (weight loss drugs) for those 18 years of age and under;
- Preventive care for children and adults, including physical examinations; laboratory services in connection with such examinations; x-rays; and other screening tests like pap smears and routine mammograms; and
- Preventive dental care, including oral examinations, tooth cleaning, bite wing x-rays, and fluoride treatments.

The above list is not exclusive. The EEOC will look at your plan’s coverage of other prescription drugs and devices or other types of services that are used to prevent the occurrence of other medical conditions to determine a potential violation of the law.

According to the EEOC, you also must offer the same coverage for contraceptive-related outpatient services that you offer for other outpatient services. If a woman visits her doctor to obtain a prescription for contraceptives, she must be afforded the same coverage that would apply if she or any other employee had consulted a doctor for other preventive care or health maintenance services. On the other hand, if you limit coverage of comparable drugs or services (e.g., by imposing maximum payable limits), those limits may also be ap-

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE
- LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

plied to contraceptive drugs and devices.

If you determine you must cover the expense of a prescription contraceptive, your coverage must extend to the full range of prescription contraceptive choices. In addition, you must include such coverage in each of the health plan choices you offer to your employees.

While the EEOC ruling was directed to two women who complained to the agency, this opinion could influence the outcome of litigation in this area. Therefore, as a result of this ruling, there is some risk involved if you choose to exclude contraceptive coverage but cover other preventive care.

While the Pregnancy Discrimination Act does not require you to provide contraceptives to your employees, it is the position of the EEOC that the Act does require you to (1) cover the expenses of prescription contraceptives to the same extent, and on the same terms, that you cover expenses of other prescription drugs and devices or other types of services that are used to prevent the occurrence of medical conditions other than pregnancy; (2) offer the same coverage for contraceptive-related outpatient services as is offered for other outpatient services; and (3) cover the full range of prescription contraceptive choices. It's probably a good idea for you to take a look at your health plans to determine whether there is a risk of running afoul of the EEOC's position. If so, weigh the risks of maintaining the status quo versus adding prescription contraceptives to your plan.

You can access the EEOC's opinion at <http://www.eeoc.gov/docs/decision-contraception.html>

*- Timothy P. Brechtel*

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE
- LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

## CLINTON'S "LAST MINUTE" OSHA ERGONOMICS RULE SURVIVES BUSH ADMINISTRATION'S POSTPONEMENT ORDER

On January 16, 2001, during the waning hours of Bill Clinton's presidency, the Occupational Health and Safety Administration ("OSHA") ergonomics rule took effect. According to OSHA, the ergonomics rule is intended to protect a panoply of workers whose jobs cause "musculoskeletal disorders of the upper extremities, back and lower extremities." However, as reported by CNN and other news media, the rule has come under fire for both the rushed, haphazard manner in which it was promulgated by President Clinton's Administration (without undertaking a thorough consideration of public "comments" on the rule) and the "one-size-fits-all," overly broad stroke of the rule. Accordingly, Senator Mike Enzi (R-Wyo.) recently announced an impending plan to overturn the measure pursuant to the Congressional Review Act ("CRA"). Under the CRA, the Senate must act before mid-March and sequester a simple-majority vote to achieve this end. **Until that time, however, OSHA's ergonomics rule remains in effect.** (Note: You may already be aware that President Bush "stayed" a slew of last-minute Clinton Administration federal regulations including, for example, new reporting requirements under the Labor Management Reporting and Disclosure Act. President Bush's postponement measures, however, do not apply to the new OSHA ergonomics rule.)

The rule applies to "general industry" work sites engaged in manufacturing or production enterprises, as well as other employers with one or more workers who have sustained repetitive stress injuries or "musculoskeletal disorders." The rule does not apply to certain construction, agricultural, and maritime employers, however. **In addition, the rule contains no exceptions based on the size of an employer's workforce and, thus, applies equally to large companies and small businesses.** Without a doubt, the scope of the ergonomics rule's coverage is incredibly broad.

The rule requires employers to institute an "ergonomics program." Among other things, this means you must train your employees about the causes and symptoms of musculoskeletal injuries, designate an employee "go-to" person regarding ergonomics issues, create an injury reporting system, undertake a job hazard analysis and control program, provide special management attention to workers who sustain covered injuries, and keep abreast of record-keeping requirements. Unless and until the Senate overturns OSHA's ergonomics rule,

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- AVIATION
- APPELLATE LITIGATION
- BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- ERISA, LIFE, HEALTH & DISABILITY INSURANCE
- LITIGATION
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION
- INTELLECTUAL PROPERTY & E-COMMERCE
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MEDICAL PROFESSIONAL & HOSPITAL LIABILITY
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES

you should develop a new musculoskeletal injury program (if you don't already have one in place) or modify your existing program to conform with the new rule.

*- Howard T. Boyd, III and Thomas P. Hubert*

*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact::*

H. Mark Adams  
Jones Walker  
201 St. Charles Ave., 47th Fl.  
New Orleans, LA 70170-5100  
ph. 504.582.8258  
fax 504.582.8015  
email madams@joneswalker.com

Sidney F. Lewis, V  
Jones Walker  
201 St. Charles Ave., 47th Fl.  
New Orleans, LA 70170-5100  
ph. 504.582.8352  
fax 504.589.8352  
email slewis@joneswalker.com

### Labor, Employment & Employee Benefits Practice Groups

H. MARK ADAMS	CORNELIUS R. HEUSEL
JENNIFER L. ANDERSON	THOMAS P. HUBERT
ALTON E. BAYARD	CLYDE H. JACOB
JOHN C. BLACKMAN	MARY ELLEN JORDAN
HOWARD T. BOYD, III	SIDNEY F. LEWIS V
TIMOTHY P. BRECHTEL	CHARLOTTE MARQUEZ
LAURIE M. CHESSE	EDWARD F. MARTIN
SUSAN K. CHAMBERS	STEPHANIE C. MOORE
MICHELE WHITESELL CROSBY	MARGARET F. MURPHY
MADELEINE FISCHER	RUDOLPH R. RAMELLI
REBECCA GOTTSEGEN	ANTONIO D. ROBINSON
VIRGINIA WEICHERT GUNDLACH	ROBERT B. WORLEY, JR
PAULINE F. HARDIN	

To subscribe to other E\*Zines, visit [www.joneswalker.com/news/ezine.asp](http://www.joneswalker.com/news/ezine.asp)