

## Does your Incentive Program or Disciplinary Policy constitute “UNLAWFUL DISCRIMINATION”?

A new OSHA memo focuses on employer practices that discourage injury reporting by employees. The March 12, 2012 communication says we should be aware of four potentially discriminating policies regarding an employee who reports an on-the-job injury:

- Taking disciplinary action regardless of the circumstances of the injury
- Disciplining an employee for violating an employer rule about the time or manner for reporting injuries and illnesses
- Disciplining an employee for an injury that resulted from the employee violating a safety rule
- Offering incentives to not report injuries; for example, offering prizes to employees who were not injured in the previous year

Such policies could discourage reporting of injuries and could be considered unlawful discrimination. Retaliation against an employee for reporting an occupational injury is a violation of Section 11(c) of the Occupational Safety and Health Act.

“If employees do not feel free to report injuries or illnesses, the employer's entire workforce is put at risk. Employers do not learn of and correct dangerous conditions that have resulted in injuries, and injured employees may not receive the proper medical attention, or the workers' compensation benefits to which they are entitled. Ensuring that employees can report injuries or illnesses without fear of retaliation is therefore crucial to protecting worker safety and health.”

“OSHA recognizes that employers have a legitimate interest in establishing procedures for receiving and responding to reports of injuries. To be consistent with the statute, however, such procedures must be reasonable and may not unduly burden the employee's right and ability to report.”

“Some employers establish programs that unintentionally or intentionally provide employees an incentive to not report injuries. For example, an employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. Such programs might be well-intentioned efforts by employers to encourage their workers to use safe practices. However, there are better ways to encourage safe work practices, such as incentives that promote worker participation in safety-related activities, such as identifying hazards or participating in investigations of injuries, incidents or “near misses”.

If you've never taken the time to read the full text of an OSHA memo, now is the time to start.

For the full text of the document, go to <http://www.osha.gov/as/opa/whistleblowermemo.html>