

# OSHA Memorandum on Safety Incentive Disincentive Policies-Update

See OSHA Director David Michaels letter of July 30, 2012 response to our letter of April 18, 2012 regarding the OSHA Guidance.

## Summary of Director's Comments Affirming Employers Authorities:

### Incentives

"OSHA does not believe that all incentive programs are improper."

"I whole-heartedly agree that incentives can be used to encourage positive behaviors."

### Discipline for Failure to Report Injuries

"OSHA also recognizes employer's legitimate interest in establishing procedures for receiving and responding to reports of injuries, and nothing in the memo is intended to undermine that interest."

"OSHA agrees that employers must be able to enforce reporting rules. The March 2012 memo itself notes, "OSHA recognizes that employers have a legitimate interest in establishing procedures for receiving and responding to reports of injuries." Further the memo recognizes that employers may take steps to discipline employees who do not comply with reporting procedures, provided that the discipline is reasonable in the circumstances."

"None of this is to say that employers may not enforce their injury reporting requirements. Rather our point is that unreasonable enforcement of such requirements can discourage employees from reporting injuries and may violate the requirements of Section 11(c) and lead to violations of OSHA's recordkeeping requirements."

## Summary of Director's Comments That Seem to Reduce Employers Authorities:

### Discipline:

"The memo targets discipline that is *not* reasonable. Or that is meted out discriminatorily to employees who are injured. This includes situations in which an employer terminates an injured employee for a minor violation of reporting requirements, such as reporting an injury a few hours after it occurred, because that was when the employee realized the injury was significant enough to report. The imposition of such a severe sanction for a modest violation raises a question about whether the reporting rule violation was, in fact, the real reason for the termination."

### Incentives:

"Programs that give awards based on an employee or work unit not having any reported injuries are likely to have the reverse effect of incentivizing workers to simply not report their injuries. When injuries are not reported, as noted above, employers are without information that will help them protect their other employees and insure the injured employee receives appropriate treatment. In programs that penalize an entire workgroup because a single member reports an injury, the effect may be magnified because workers are often especially reluctant to report an injury if the that report will have a negative effect on their colleagues as well as themselves. In addition, if the employer fails to record an injury because the employee does not report it, the employer is in violation of OSHA's recordkeeping requirements.

**Bottom Line:** *Employers may continue to discipline employees who fail to report injuries appropriately. Use of affirmative incentives for achieving safety goals is likely to be targeted by OSHA as discriminatory.*