

EMPLOYMENT SERVICES ALERT

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OSHA Prepares to Target Safety Incentive Programs

The Occupational Safety and Health Administration (OSHA) has announced that it will issue a final rule this fall that may make safety incentive programs, which reward employees for low accident levels, illegal. Such a rule was recently sent to the Office of Management and Budget for review, meaning its issuance may be imminent.

OSHA has long frowned upon safety incentive programs, as such programs can encourage employees to not report accidents or injuries. In 2010, the Administration launched its Recordkeeping National Emphasis Program. The program created record inspections that would review employers' OSHA 300 logs and compare them to workers compensation records and information from employees' personal care providers. Additionally, inspectors were advised that underreporting of accidents combined with the existence of an incentive program would result in a "willful" or "serious" violation of OSHA's recordkeeping standard.

The next foray into safety incentive programs occurred in March of 2012, when OSHA issued a memorandum on "Employer Safety Incentive and Disincentive Policies and Practices." The memo addressed multiple programs OSHA felt could result in underreporting of injuries, including the awarding of bonuses or prizes to teams of employees if no team member suffers an injury, disciplining injured employees for not following employer rules regarding the time or manner of the reporting, and punishing employees for violations of employer rules that result in injuries. Further, OSHA is considering an amendment to its already controversial Electronic Recordkeeping rule that would make it a violation for an employer to discourage employee reporting as related to electronic records. Among the conduct noted by OSHA as discouraging reporting is automatic discipline for employees who seek medical attention, mandatory drug testing for employees who report an injury, and disqualifying employees who report two injuries or illnesses from their current job.

OSHA's conduct in the past half-decade has shown an ongoing focus on incentive programs. As such, employers should examine their programs and practices to ensure they do not discourage the reporting of injuries. Employers should particularly focus in on whether or not they are underreporting accidents, and key in on the accuracy of their OSHA 300 logs.

For additional information and assistance in complying with OSHA's reporting requirements, please contact one of the Roetzel attorneys listed below:

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