

OSHA: Don't Get Caught in the Trap of Rewarding Employees for Reducing Recordables!

Publication

9.10.12

For several years, we have encouraged employers to move away from safety management programs that primarily track the program's effectiveness based upon recordable injuries and utilize monetary incentive programs based in whole or in part on the number of recordable workplace injuries and illnesses experienced by an employee or group of employees.

However, employers have another reason to increasingly shift away from programs primarily driven by recordables. Even before the current administration's leaders took office, they questioned the accuracy of employer recordkeeping and asserted that employees underreport workplace injuries in order to participate in safety incentive programs, or as a result of pressure imposed upon them by employers either on an intentional basis or as a result of their safety management processes.

Moreover, all branches of the U.S. Department of Labor steadily have escalated their emphasis on the prosecution of whistleblower claims. OSHA and other federal agencies actively have encouraged employees to be sensitive to possible retaliation and discrimination on the basis of protected behavior, including safety-related activities (especially the reporting of recordable injuries). Numerous decisions have come out in the last few years in which OSHA claimed that employers who discharged employees for safety violations associated with injuries were using "safety violations" as a pretext for retaliation.

We hardly need another reason to encourage clients to review and revamp incentive programs or be wary of increased risks associated with whistleblower claims, but these developments certainly increase the sense of urgency.

This article appeared in the September 10, 2012 issue of [*EHS Today*](#).

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