

OSHA Provides Guidance on New Injury Reporting Requirements

Amundsen Davis OSHA Alert

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Recently, OSHA issued a memorandum providing much-needed clarity on rule changes concerning the reporting of work-related injuries and illnesses. Below are some practical tips, as outlined in the memorandum, which should be taken to comply with the rule changes.

Reporting Procedure

The Rule: The rule requires employers to establish reasonable procedures for employees to report work-related injuries and illnesses. OSHA has indicated that citations will be issued when:

- 1) the employer does not have such a procedure; or
- 2) the procedure is unreasonable.

Tips: OSHA has identified the following requirements as being unreasonable:

- 1) requiring employees to report injuries "immediately" or face discipline; and
- 2) requiring employees to report injuries in person.

OSHA suggests that a reasonable procedure is one that allows employees to:

- 1) report injuries "as soon as practicable," which could include the same day or the next day; and
- 2) report injuries and illnesses by way of phone or email, in addition to in-person.

No Retaliation

The Rule: The rule prohibits employers from retaliating against employees for reporting work-related injuries and illnesses, focusing on three separate areas: 1) discipline; 2) drug testing; and 3) safety incentive programs.

Tips for Discipline: OSHA encourages employers to discipline employees when they violate a safety rule, but employers cannot discipline employees more

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severely for the violation of a safety rule that results in an injury. OSHA has indicated that it will look into how an employer handles discipline to determine whether it is being used to discourage employees from reporting injuries. In that regard, employers should be consistent when disciplining employees—namely, an employee that violates a safety rule and is injured should not be disciplined more severely than an employee that violates that same safety rule and is not injured.

Tips for Drug Testing: OSHA does not prohibit drug testing of employees as long as there is an “objectively reasonable” basis for the testing. If impairment could have played a role in the injury, then drug testing of all employees whose conduct may have caused or contributed to the incident can and should be conducted. If, however, impairment could not have played a role in causing the injury, drug testing should not be implemented. In OSHA’s example, if a crane accident injures a number of employees in the area of the crane, the crane operator should be drug tested but not the employees who were merely in the area of the crane at the time of the accident, since their conduct played no role in causing the accident.

Tips for Safety Incentive Programs: OSHA does not prohibit safety incentive programs as long the programs do not result in adverse action against employees for reporting injuries or illnesses. That is to say that safety incentive programs should not be tied *directly* to injuries and illnesses. For example, if as an incentive, an employer has a lunch every time there are no reportable injuries during that month, that program discourages employees from reporting injuries for fear of losing the lunch and is not permissible. If, however, the employer has a lunch every month no violations of safety rules are observed, or after safety training is held those are permissible programs because they are not directly related to injuries and illnesses.

Conclusion

While we have a new, pro-business administration coming into office, we expect OSHA to continue down the enforcement path. As a result, employers would be well-advised to ensure that their injury and illness reporting programs comply with the practical tips outlined by OSHA in its latest memorandum.