

OSHA Issues Memo on Incentive Programs and Drug Testing

Labor & Employment Law Update

By Matthew Horn on October 16, 2018

On October 11, 2018, OSHA issued an additional memorandum to further clarify its position on incentive programs and drug testing. While the memorandum does not set out drastic changes to OSHA's earlier rule and guidance, it does indicate that OSHA will take a more practical approach to incentive programs and drug testing than previously indicated.

With regard to incentive programs, it indicates that traditional incentive programs based on a lack of injuries during a particular time period will not be deemed violative of OSHA if the employer has measures in place to ensure that employees are reporting injuries regardless of the programs. With regard to drug testing, it indicates that drug testing is allowed in the following circumstances: 1) random testing; 2) drug testing unrelated to an injury; 3) testing pursuant to a state's workers compensation laws; 4) testing pursuant to federal law, including U.S. DOT rules; and 5) testing employees whose conduct could have caused or contributed to an incident or injury.

Notably, this memorandum appears to be another step in the right direction by the current administration to implement a more business friendly OSHA.