

## OSHA Pulls Back on Previous Guidance with New Position

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The Occupational Safety and Health Administration has clarified its position on workplace safety incentive programs and some post-accident drug testing programs.

The October guidance - "[Clarification of OSHA's Position on Workplace Safety Incentives and Post-Accident Drug Testing](#)" - changes course from previous guidance which contended that workplace safety incentive programs and some post-accident drug testing programs may be a deterrent to employees reporting work-related injuries. That put it in direct contention with a previous OSHA regulation.

The new guidance pulls back on this position and provides that workplace safety incentive programs are permissible unless they penalize an employee for reporting a work-related injury or illness. The guidance notes permissible elements of a workplace safety incentive program that would likely counterbalance any deterrent effect such as an incentive program that rewards employees for identifying unsafe conditions, a training program that reinforces reporting rights and emphasizes the employer's non-retaliation policy and a mechanism for accurately evaluating employees' willingness to report injuries and illnesses.

The guidance also states that "most instances of workplace drug testing are permissible." The guidance notes that drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees is acceptable. However, if the employer chooses to use a drug test to evaluate the incident, the employer should test all employees whose conduct could have contributed to the incident, not just employees who reported injuries.

We encourage employers to review their drug testing policies to ensure that post-accident testing meets OSHA regulations and guidance. We further encourage employers with workplace safety incentive programs to review such programs to ensure that permissible elements of the program as identified by OSHA are incorporated into their programs.

The [Barley Snyder Employment Practice Group](#) regularly reviews such policies and programs. Please [contact me](#) or any member of our group for assistance.

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