

## NEW OSHA GUIDELINES

June 30, 2017

In May 2016, OSHA published a final rule that makes explicit the requirement for employers to have a reasonable procedure for employees to report work-related injuries and illnesses. An employer's reporting procedure is reasonable if it is not unduly burdensome and would not deter a reasonable employee from reporting within a reasonable timeframe.

**EMPLOYERS DO NOT NEED TO COMPLETELY REMOVE DRUG TESTING POLICIES; THEY JUST NEED TO BE REVIEWED TO ENSURE THAT THE POLICIES ARE NOT USED TO RETALIATE AGAINST EMPLOYEES.**



*The amendment passed in January 2017. The final rule set an initial deadline of July 1, 2017, by which employers are to report to OSHA. An action has been proposed to extend the deadline to December 1, 2017 to allow for review of the requirements of the new reporting system, which will not be available until August 1. Written comments must be submitted by July 13, 2017.*

Three types of policies can be used to “retaliate”:

- **Disciplinary policies.** It prohibits disciplining employees simply because they report a work-related injury or illness.
- **Drug and Alcohol Testing.** The provision does not prohibit employers from drug testing employees who report work-related injuries or illnesses so long as they have an objectively reasonable basis for testing, and the rule does not apply to drug testing employees for reasons other than injury-reporting.
- **Employee Incentive Programs.** The provision does not prohibit safety incentive programs. Conditioning a benefit on compliance with legitimate safety rules or participation in safety-related activities would be considered a violation. Rewarding employees for participating in safety training would not violate the rule.

OSHA is not prohibiting these kinds of policies categorically, and the changes do not impose any new obligations or restrictions on employers. The provision gives OSHA another mechanism to address conduct that has always been unlawful.

**NOTE: All employers are now required to:**

- inform employees of their right to report work-related injuries and illnesses free from retaliation;
- clarify that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and
- incorporate the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

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