



TEAMSTERS Safety & Health FACTS

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Employer Safety Incentive and Disincentive Policies and Practices

New OSHA Policy Memorandum on Employer Practices that can Discourage Injury and Illness Reporting

On March 12, 2012 the Occupational Safety and Health Administration (OSHA) issued a memorandum that outlines OSHA's position regarding employer policies and practices that discourage workers from reporting occupational injuries and illnesses.

“Reporting a work-related injury or illness is a core employee right , and retaliating against a worker for reporting an injury or illness is illegal discrimination under section 11(c) [of the whistleblower statutes]. If employees do not feel free to report injuries or illnesses, the employer's entire workforce is put at risk. Employers do not learn of and correct dangerous conditions that have resulted in injuries, and injured employees may not receive the proper medical attention, or worker's compensation benefits to which they are entitled.” (OSHA Whistleblower Policy Memorandum, 2012)

Types of Employer Policies and Practices that Could Be a Violation of 11(c):

The memorandum gives examples of four types of employer policies and practices that could violate OSHA Section 11(c) and other whistleblower protections and could also result in violations of OSHA's recordkeeping requirements:

- **Injury Discipline:** Where employers have a policy or practice of disciplining workers who report injuries, regardless of the circumstances surrounding the injury. This would violate 11(c) and could also violate an employers' obligation to establish a way for employees to report injuries as required by OSHA's recordkeeping rule.
- **Discipline for “Untimely” Reporting of Injuries or for Not Reporting Injuries in the Way Required by the Employer:** Where employers have rules that all injuries must be reported immediately, and workers are disciplined even in cases where they do not immediately realize that an injury or illness has occurred or that an injury and illness was

serious enough to be reported; or where the employer's reporting requirements are unreasonable, unduly burdensome or enforced with unjustifiably harsh penalties.

- **Discipline for “Violating a Safety Rule”:** When employers use violating a safety rule as an excuse for disciplining workers who report job injuries and illnesses; or when employers have vague rules like a requirement that employees “maintain situational awareness” or “work carefully” and then only discipline workers for violating those rules when they report injuries. Enforcing such rules more harshly against injured employees than non-injured employees may suggest that the rule is a pretext for discrimination against an injured employee in violation of OSHA section 11(c).
- **Safety Incentive Programs:** Where employees are disqualified from rewards and prizes because injuries and illnesses are reported. Incentive programs that unintentionally or intentionally provide employees an incentive not to report injuries can be a violation of 11(c) and result in unreported injuries in violation of OSHA's recordkeeping rule.

In addition, OSHA's memorandum states, “OSHA has also observed that the potential for unlawful discrimination under all of these policies may increase when management or supervisory bonuses are linked to lower reported injury rates.”

Resources:

- Download a copy of the OSHA memorandum at:
<http://www.osha.gov/as/opa/whistleblowermemo.html>
- Read OSHA Section 11(c) at:
http://www.osha.gov/pls/oshaweb/owadispl.show_document?p_table=STANDARDS&p_id=11333.
- Contact OSHA's whistleblower program to discuss filing formal complaints for violations of OSHA's Section 11(c) or other whistleblower protections and/or OSHA's Recordkeeping Rule. (call 1-800-321-OSHA for the OSHA office nearest you)
- Other whistleblower statutes enforced by OSHA also may protect employees who report workplace injuries. In particular, the Federal Railroad Safety Act (FRSA) prohibits railroad carriers, their contractors and subcontractors from discriminating against employees for reporting injuries (49 USC 20109 (a)(4)).
- The IBT Safety and Health Department can assist Local Unions with filing OSHA complaints and 11(c) discrimination claims. Note that an OSHA 11(c) discrimination complaint must be filed within 30 days of the employer's adverse action.