

Safety Programs and OSHA Compliance

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Many employers try to reduce accidents and related workers' compensation expenses by introducing safety programs which include a variety of incentives. The problem is, some of those programs and incentives can get you in trouble with OSHA. Much of what follows comes from an OSHA memo.

To begin with, section 11(c) of the Occupational Safety and Health Act prohibits an employer from discriminating against an employee because the employee reports an injury or illness. The concern is over employer practices that can discourage employee reports of injuries and violate section 11(c), or other whistle-blower statutes. As you will see, OSHA seems to believe that many employer safety programs fit the discouragement criteria.

Reporting Injuries

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). Other whistle-blower statutes enforced by OSHA may also protect employees who report workplace injuries.

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 the workers' compensation benefits to which they are entitled. Ensuring that employees can report injuries or illnesses without fear of retaliation is therefore crucial to protecting worker safety and health.

There are several types of workplace policies and practices which could discourage reporting and could con-

stitute unlawful discrimination and a violation of section 11(c) and other whistle-blower protection statutes. Some of these policies and practices may also violate OSHA's record keeping regulations, particularly the requirement to ensure that employees have a way to report work-related injuries and illnesses. Below I list the most common potentially discriminatory policies.

Discriminatory Practices

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. While OSHA appreciates

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employers using safety as a key management metric, it cannot condone a program that encourages discrimination against workers who report injuries (even if there is no proof that the incentive in fact does so)!

1. OSHA has received reports of employers who have a policy of taking disciplinary action against employees who are injured on the job, regardless of the circumstances surrounding the injury. For example, an employer's policy to discipline all employees who are injured, regardless of fault, is not a legitimate nondiscriminatory reason that an employer may advance to justify adverse action against an employee who reports an injury.
2. In another situation, an employee who reports an injury or illness is disciplined, and the stated reason is that the employee has violated an employer rule



about the time or manner for reporting injuries and illnesses. OSHA recognizes that employers have a legitimate interest in establishing procedures for receiving and responding to reports of injuries. To be consistent with the statute, however, such procedures must be reasonable and may not unduly burden the employee's right and ability to report. For example, the rules cannot penalize workers who do not realize immediately that their injuries are serious enough to report, or even that they are injured at all. Nor may enforcement of such rules be used as a pretext for discrimination. In investigating such cases, factors such as the following may be considered:

- whether the employee's deviation from the procedure was minor or extensive, inadvertent or deliberate;

- whether the employee had a reasonable basis for acting as he or she did;
- whether the employer can show a substantial interest in the rule and its enforcement; and
- whether the discipline imposed appears disproportionate to the asserted interest.

3. In a third situation, an employee reports an injury, and the employer imposes discipline on the ground that the injury resulted from the violation of a safety rule by the employee. In this case, the employer may attempt to use a work rule as a pretext for discrimination against a worker who reports an injury. A careful investigation is needed. Several circumstances are



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relevant. Does the employer monitor for compliance with the work rule in the absence of an injury? Does the employer consistently impose equivalent discipline against employees who violate the work rule in the absence of an injury?

The nature of the rule cited by the employer should also be considered. Vague rules, such as a requirement that employees “maintain situational awareness” or “work carefully” may be manipulated and used as a pretext for unlawful discrimination. Where such general rules are involved, the investigation must include an especially careful examination of whether and how the employer applies the rule in situations that do not involve an employee injury. Enforcing a rule more stringently against injured employees than noninjured employees may suggest that the rule is a pretext for discrimination.

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4. Finally, some employers establish programs that unintentionally or intentionally provide employees an incentive not to report injuries. For example, an employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. Such programs might be well-intentioned efforts by employers to encourage their workers to use safe practices.

Incentive programs that discourage employees from reporting their injuries are problematic because, under section 11(c), an employer may not “in any manner discriminate” against an employee because the employee exercises a protected right, such as the right to report an injury. For example, if an employee of a firm with a safety incentive program reports an injury, the employee, or the employee’s entire work group, will be disqualified from receiving the incentive, which could be considered unlawful discrimination.

One important factor to consider is whether the incentive involved is of sufficient magnitude that failure to receive it “might have dissuaded reasonable workers from” reporting injuries. This may be more likely in cases where an entire work group is disqualified because of a reported injury to one member, because the injured worker in such a case may feel reluctant to disadvantage the other work group members.

When it discovers that an incentive program contains provisions that could discourage reporting of injury and illness, OSHA will advise the employer of OSHA’s position and policy. The employer may choose to make an immediate change to its incentive program that will bring the program in line with the policy. If the employer needs more than a nominal period of time to eliminate the disincentive and/or to revise its program, it would be appropriate to designate this needed improvement as an improvement goal.

If OSHA identifies a problem with an incentive program, the employer will be given the opportunity to correct the problem within 90 days. During this time, the employer must eliminate the disincentive and/or revise its program. After the 90-day period, OSHA may choose to place the employer on one-year conditional status and require the employer to demonstrate one year of effective implementation of the program change.

Positive Incentive Programs

A positive incentive program encourages or rewards workers for reporting injuries, illnesses, near-misses, or hazards, and/or recognizes, rewards, and thereby encourages worker involvement in the safety and health management system. Such an incentive program can be a positive force and constitute an acceptable part of a quality safety and health management system. Examples of such positive incentives include providing T-shirts to workers serving on safety and health committees, offering modest rewards for suggesting ways to strengthen safety and health; or throwing a recognition party at the successful completion of company-wide safety and health training.



Getting safety right is an ongoing challenge that pits employer expectations against employee rights. Whether or not safety incentive programs cause more harm than good, OSHA often finds that they do, and employers must be prepared to comply with OSHA’s policies and address related concerns.

To learn more about OSHA Voluntary Protection Programs (VPP), go to www.osha.gov/dcsp/vpp/policy_memo5.html and www.osha.gov/dcsp/vpp/index.html.

The Author

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De-stress Your Holiday Shopping

Many times, holiday shopping turns what should be a happy, family-centered time into stress overload and debt. You have to shop for gifts, food, decorations and even a new outfit for the holiday party. Planning ahead, not taking the process too seriously and enjoying the little moments are a good start to changing the stress back into fun. Below are a few common stressors and ways to avoid them as the holiday shopping season begins in earnest.



Big crowds. Perhaps you have convinced yourself that spending your holiday weekends at the mall is actually fun, but most people would rather not be caught in the chaos for too long. To avoid the massive holiday crowds, try shopping online for at least some of your purchases. Not only can you avoid the crowds, but most online stores allow you to ship right to your intended recipient, saving you the hassle of standing in long lines at the post office to mail gifts for out-of-town family and friends.

Last-minute rush. Plan ahead with a list of everyone you want to purchase a gift for, as well as a pre-planned menu that will take the guessing out of grocery shopping. Even if you do get caught in

the stores at the last minute, having a list will help you navigate the crowds and resist the flashy sale items you don't truly need.

Returns and gift receipts. Instead of giving in to desperation and buying one more holiday special or purchasing a clothing item without regard to the correct size, try giving something that can't be returned: an experience. For example, instead of giving your niece yet another horse-themed sweater that doesn't fit, give her a gift certificate for a horseback riding lesson. Not only will she not need to return the gift, but she will create a fun memory that reminds her of you.

Going over budget. Shopping throughout the year can help you reduce spending by finding items you like during sales, and you might even find items that aren't available during the holidays. Year-round shopping also spreads out the holiday expenses over 12 months instead of just one. When you find a good price on the perfect gift, buy it then—even if it's the middle of April. At home, have a designated shelf or container where you can safely stash your gifts.

With a little planning and creativity, you can confidently de-stress your holiday shopping.

This Year, Resolve to Follow Through

In an effort to make the next year better than the last, many people make New Year's resolutions. While it's easy to make resolutions, they are often difficult to keep after the first few weeks. A little planning will help you succeed.

Start by making a resolution that is significant to you. If spending less time on your phone is important because you want to play with your kids, you're more likely to stick with it than if you decide to lose 10 pounds because everyone else in the office wants to.

Next, plan how you will make it happen. For example, if you decide to eat healthier, choose which junk foods you will give up and what you will replace them with.

Resolutions are not kept through will-power alone. When it gets tough, you need help. Try writing a reminder, such as a sticky note at your desk. Also, telling a friend who can encourage you will help a lot when it gets harder to stick to your resolution.

Finally, don't give up. If you ate a family-sized bag of potato chips by yourself, you haven't ruined your resolution. Just start the next day as if you never faltered, and keep working on it — remember, new habits take time.

DID YOU KNOW

Studies indicate that approximately 50 percent of resolution-makers are still on track to meet their goals after six months.



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Are You Ready for Jack Frost?

Preparing for winter is something everyone should do, even if you're only planning on traveling to colder regions for a few days during the holidays. Winter storms can arrive quickly and unexpectedly, even in areas that don't frequently get them. Here are a few safety tips to consider whether you're preparing to face one small storm or months of snow.

- Dress for the weather and be prepared for the worst. If you're driving to a holiday party, make sure you have a spare blanket or coat in case of car trouble.
- Keep salt or sand ready to spread on icy walkways.
- Store snow removal tools, such as shovels or a snow blower, in an accessible location.
- Bring animals into the house or other appropriate shelter.

- Know what to do if you lose power – for example, have a backup source for light (a flashlight), heat (wood for a fireplace) and communication (battery-operated radio).



Winter Workouts: Skip the Gym But Not the Sweat

Winter has arrived, and whether you are anticipating a storm or gazing out the window at a gray sky, you might lack the motivation to go to the gym. Instead of skipping your workout, you can follow these suggestions to exercise in the safety, warmth and comfort of your own home.

Clear space. Find or create an area that gives you room to move around. It doesn't need to be too large, just enough space to avoid bumping into a lamp or falling over the coffee table.

Keep it simple. The great thing about exercising at home is you don't need complicated equipment. Perform exercises that don't need extra machinery, like push-ups, crunches or jogging in place, or be creative and use cans of soup or a gallon of milk as light weights.

Think fun. When you're working out at home, you can blast your favorite music, or, if you have a nearby television, watch a movie or catch up on a sitcom series. You don't have to share the space with other gym-goers, so you have more freedom to make your workout time fun.

Set the timer. Even though you're working out in your living room, sticking to a routine is important. Pick a time that works, and don't get distracted by dirty dishes or laundry that needs to be folded. Use your allotted time for exercise and avoid the temptation of taking a nap on the couch that's only 2 feet away.

Pork Stew With Brown Rice

There are few foods more comforting on a cold evening than a warm stew for dinner. This pork stew recipe combines the comfort factor with good nutrition, making it a wintertime winner.

- 2 pounds of lean pork stew meat
- 3 cups baby carrots
- 1 large onion, sliced
- 1½ tsp. dried thyme leaves
- ½ tsp. coarse ground black pepper
- ¼ tsp. salt
- 1 clove garlic, minced
- 1½ cups bran and wheat flakes cereal, crushed to ¾ cup
- 1 cup dried tart cherries
- ¾ cup 100% apple juice or apple cider
- 4 cups hot cooked brown rice

Trim fat from pork. Spray large pan with non-stick cooking spray. Cook pork 1 pound at a time until browned. While pork is browning, in 4-6 quart crockery cooker layer carrots, onion, thyme, pepper, salt and garlic. Sprinkle with cereal and cherries. Top with browned pork. Pour apple juice or cider over all. Cover and cook on low heat setting for 7-8 hours or on high heat setting for 3 ½ to 4 hours. Prepare the brown rice according to package directions toward the end of the stew cooking. (Brown rice typically takes about 40-45 minutes to cook). When rice is done cooking, stir pork mixture and serve over rice.

Yield: 8 servings. Each serving contains 360 calories, 2g of saturated fat, 220mg of sodium, 658mg of potassium, 89mg of calcium, 37 IU (0.91 mcg) of vitamin D, and 6g of dietary fiber.

SPOTLIGHT ON



Cavnag & Associates is proud to support local and non-profit civic organizations, including the San Diego Center for Children.



The San Diego Center for Children is a 126-year old accredited nonprofit organization offering one of the most comprehensive behavioral health programs in the region for children from 3 to 18 years of age. Through our Center “safety net” of professionals and community partnerships, we strive to achieve solutions for children and families and to identify and assess behavioral issues long before they escalate. Our mission is achieved by implementing the Continuum

of Behavioral Health for Children. The Continuum provides “one stop” identification, assessment, and treatment support for the family seeking help or the professional providing treatment. The Continuum emphasizes excellence in care through therapeutic treatment, academic development and community partnerships in order for children to have the greatest potential to transition successfully into adulthood.

For more information about the San Diego Center for Children, visit: www.centerforchildren.org