

## Safety Incentive and Injury Discipline Policies: The Bad, the Worse and the Downright Ugly

Workers face increasing obstacles in achieving safe and healthy workplaces. In an effort to save money and keep OSHA away, employers are armed with a bag of tricks to intimidate workers and prevent them from reporting injuries. These include, but may not be limited to, safety incentive programs, injury discipline policies and other gimmicks that focus entirely on workers' behavior to make a workplace safe.

### Safety Incentive Programs

- *In a Washington state workplace, workers were offered three tokens worth \$1.00 each for every month they went without reporting carpal tunnel syndrome, heat stress or any other work-related injury or illness. More tokens were offered quarterly if the entire workforce did not report an injury or illness.*
- *A Midwestern industrial firm invited all workers who did not report a job injury or illness for the year to an annual banquet. There, the name of a banquet attendee was pulled out of a hat; that person left with a check for \$10,000.*
- *At a Northeastern construction site, monies are made available on a periodic basis to contractors who have low injury rates; that money is then divided among the contractor's workers who did not report injuries.*

These types of "safety incentive" programs have been around for a long time; today they are an increasingly popular part of employers' so-called safety efforts. They are as damaging now as they were when they first began appearing decades ago.

The theory that supposedly underlies these programs is that workers' unsafe behaviors are to blame for workplace injuries and illnesses. Under this theory, providing prizes and rewards will encourage workers to behave safely on the job and therefore not get injured. Absent in this "blame the worker" theory is the role that hazardous workplace conditions play in job-related injury, illness and death.

It is in employers' interests to hold to such worker-blaming theories and provide

rewards to workers when they do not report injuries. Here is what employers get from this deal:

- The fewer injuries and illnesses that workers report, the lower the number of “OSHA recordables” that must be entered on a company’s OSHA 200 log of worksite injuries and illnesses. The lower the injury rate on a firm’s log, the lower the chance that an employer will be targeted by OSHA for an inspection.
- When workers don’t report injuries and illnesses as work-related, they also may not file a workers’ compensation claim and/or may be denied a future claim for that injury. This in turn can reduce an employer’s workers’ compensation premiums and payments.

## **Harming Workers and Jeopardizing Worksite Safety**

While employers save money and can escape OSHA scrutiny, workers and workplaces suffer from the presence of these “safety incentive” programs:

- When workers are discouraged from reporting work-related injuries and illnesses, they may not receive early diagnosis and treatment of their ailments, as well as the compensation they deserve.
- When job injuries and illnesses are not reported, the hazards on the worksite that caused them are not identified and targeted for elimination or correction. Hazards in today’s workplaces that cause or contribute to job injury, illness and death include toxic chemicals; unguarded machines; understaffing; improperly designed tools, equipment and workstations; fatigue from long work hours; heavy work loads; rapid pace of work; production pressures and a myriad of other safety, chemical, biological, and physical and work organization factors. Hazards that are not eliminated or reduced will continue to hurt or maim additional workers.

## **What Does OSHA Think of These Programs?**

A recent OSHA study that included a “literature review” of safety incentive programs concluded that there is no basis for employer claims that programs that provide prizes to workers who don’t report injuries actually make workplaces safer. The OSHA study also commented on the “chilling effect” that these programs have on workers’ willingness to report job injuries and illnesses.

OSHA has also cited and fined a company under the OSHA recordkeeping standard for having a safety incentive program that discouraged workers from reporting injuries and illnesses.

## **Injury Discipline Policies**

- *In a manufacturing plant in Oklahoma where there was an epidemic of back and repetitive strain injuries, all workers who reported an injury received a letter from the company stating, “It is your responsibility to perform your job in a safe manner to ensure that you are not a safety hazard to yourself and others. To remain in the*

*employment of Company XXX your safety performance must become satisfactory to management. If you are involved in another unsafe act while at work, management will investigate the incident as well as your safety performance and will determine the status of your employment, which may include discipline up to and including discharge.”*

- *After an Ohio company received a \$290,000 OSHA fine for lack of fall protection, electrical hazards and repeat lock-out/tag-out violations, a number of employer policies were instituted that threatened workers with discipline and drug testing if they reported any work-related injuries or illnesses.*

Even more sinister is the other side of the “safety incentive” coin: employer policies — like those above — that threaten and deliver discipline to workers who report job injuries and illnesses.

The same flawed theory underlies these policies: that it is workers’ unsafe acts rather than hazardous workplace conditions that cause job injuries and illnesses. Injury discipline policies literally add insult to injury. Rather than identifying root causes of occupational injuries and illnesses and addressing safety, chemical, biological, physical and work organization hazards, workers are blamed and punished for reporting their injuries.

Programs like these can be extremely effective in ending the reporting — not the experience — of work-related injuries and illnesses. The safety of workers and workplaces then suffer the same consequences as those mentioned earlier in the section on safety incentive programs.

## **Safety Incentive and Injury Discipline Programs: Worksite Hazards to be Eliminated**

Safety incentive programs that provide prizes or cash to workers if they do not report a work-related injury or illness, and deny such rewards to workers who do report; and injury discipline policies that threaten and deliver discipline to workers who report their injuries and illnesses, are, in and of themselves, worksite safety and health hazards that need to be eliminated.

## **AFL-CIO Resolution Opposes Safety Incentive and Injury Discipline Policies**

At its October 1999 convention, the national AFL-CIO passed a resolution entitled “Safe Jobs in a Changing World” that states in part:

“At the same time work restructuring and changes in employment are raising serious safety and health concerns, many employers are moving to shift responsibility for job injuries to workers by focusing on worker behavior instead of hazardous conditions. Across industries, a variety of programs are being implemented that provide incentives and awards to workers who do not report injuries, establish elaborate procedures for observing and documenting workers’

behavior and “unsafe acts” while ignoring employer mismanagement and the root causes of injuries, institute policies to discipline and fire workers who are injured, and/or impose drug testing for every worker who reports a job injury regardless of the cause.

These programs and policies have a chilling effect on workers’ reporting of symptoms, injuries and illnesses, which can leave workers’ health and safety problems untreated and underlying hazards uncorrected. Moreover, these programs frequently are implemented unilaterally by employers, pitting worker against worker and undermining union efforts to address hazardous workplace conditions through concerted action.

The AFL-CIO opposes employer programs and policies that shift responsibility for worker safety by focusing on worker behavior instead of workplace hazards and employer mismanagement and that create disincentives to reporting injuries or hazards. We believe such practices undermine worker protection and are illegal and discriminatory under the Occupational Safety and Health Act. We will seek explicit regulations and enforcement policies that prohibit such practices.”

The United Steelworkers of America, the United Auto Workers and other unions also have policy statements and resolutions opposing these harmful policies and practices.

## **What Should Be Done, and Who Should Do It?**

Employers, unions, COSH groups, occupational health and safety professionals and OSHA all have roles to play in the effort to combat these hazardous safety incentive and injury discipline programs and policies.

- Employers should cease and desist from implementing these programs and policies.
- Unions, COSH groups and occupational safety and health allies should develop materials, training and education about the hazards associated with safety incentive and injury discipline programs and policies.

In cases where employers persist in their attempts to implement or continue these programs:

- Unions should demand to bargain. Health and safety in general, and prize and discipline programs and policies are all mandatory subjects of bargaining. Using rights under the National Labor Relations Act or state labor law, unions should demand to bargain over the introduction or continuation of safety incentive and/or injury discipline programs and policies. Employers’ safety budgets should be devoted to the elimination and control of hazards, and to training on hazard recognition and control. If employers want to give cash and prizes to workers, unions could bargain rewards for workers who make recommendations on specific ways to eliminate or control job-site hazards.
- OSHA should recognize safety incentive programs and injury discipline policies that reward workers who don’t report injuries and/or punish workers who do, as violations of the anti-discrimination provisions of the Occupational Safety and Health Act,

Section 11(c). Section 11(c) prohibits employers from discriminating against workers for exercising their rights under the Act. A right that all workers covered by OSHA have is the right to report a job injury or illness to their employer. By denying prizes or cash, or delivering discipline to workers who report injuries, employers are most certainly discriminating against workers for exercising their rights under the law. OSHA should be vigorously pursuing Section 11(c) complaints on behalf of workers who face this type of discrimination. Workers who are denied rewards or who receive automatic discipline or drug testing when they report workplace injuries or illnesses should immediately file 11(c) complaints with OSHA.

**Adapted from the work of Nancy Lessin for the USWA**

# Safe Jobs and Strong Unions

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