

CWA Occupational Safety and Health Fact Sheet # 26

OSHA Policy Memorandum of Employer Practices that Can Discourage Injury and Illness Reporting

“Reporting a work injury or illness is a core employee right and retaliating against a worker for reporting an injury or illness is illegal discrimination.”

In March, 2012, OSHA issued a memorandum “Employer Safety Incentive and Disincentive Policies and Practices.” This memorandum outlines OSHA’s position regarding employer policies and practices that discourage workers from reporting job injuries and illnesses. It explains workers’ legal protections for reporting injuries and illnesses under Section 11(c) of the Occupational Safety and Health Act, other whistleblower programs (such as the Federal Railway Safety Act) and under OSHA’s Recordkeeping Rule (29 CFR 1904).

Which Employer Policies and Practices Could Be Illegal?

The memorandum gives examples of four types of employer policies and practices that might violate OSHA’s 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 or illnesses, regardless of the circumstances surrounding the injury. This would violate Section 11(c) and might also violate an employer’s 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 requiring that all injuries 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 or 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 or 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 or illnesses. Enforcing such rules more harshly against injured/ill employees than non-injured/ill employees may suggest that the rule is a pretext for discrimination against an injured/ill employee in violation of 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 to not report injuries/illnesses can be a violation of Section 11(c).

In addition, the Agency'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." OSHA highlights in the memorandum:

"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 and illnesses without fear of retaliation is, therefore, crucial to protecting workers' health and safety."

What CWA Leaders Can Do

- Currently, we have obtained the injury/illness policies/programs for AT&T and Verizon and are collecting this information for other large represented employers. These materials are available by requesting them from the Union's Occupational Safety and Health Department.
For many other employers, make a request directly to the employer for its occupational injury/illness policy/program (including the reporting of workplace injuries/illnesses and seeking medical attention). Upon receipt, please send a copy of this policy to the Occupational Safety and Health Department.
- Download a copy of the OSHA memorandum at: <http://www.osha.gov/as/opa/whistleblower.html> and share it with management, making them aware of OSHA's new guidance on these policies and practices. You can also read Section 11(c) at: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=11333.
- Review the employer policy/program, the OSHA memorandum, and Section 11(c) of the OSHAct.
- Then, if you believe the employer is in violation with the OSHA memorandum and/or Section 11(c), contact OSHA's whistleblower program (call 1-800-321-OSHA for the OSHA office nearest you) to discuss filing a formal complaint for violation of OSHA's Section 11(c), other whistleblower protections, and/or OSHA's Recordkeeping Rule.

Please note that an OSHA 11(c) discrimination complaint must be filed within 30 days of the employer's disciplinary or other adverse action.

- Use this fact sheet to inform and educate your members about OSHA's new guidance on employer policies and practices that can discourage workers from reporting occupational injuries and illnesses. Also, let members know the Union will take the necessary action to help protect their rights to report injuries and illnesses without suffering employer retaliation.
- If your employer is covered by the National Labor Relations Act (or another labor law with similar provisions), an employer's unilateral implementation of a new safety incentive or discipline policy could be an unfair labor practice; mid-term bargaining rights should be considered. Contact your Staff Representative for assistance.

Please keep the CWA Occupational Safety and Health Department informed as you address these issues. Please send updates and questions to David LeGrande at legrande@cwa-union.org.

**For further assistance, please contact the:
CWA Occupational Safety and Health Department
E-Mail : www.cwasafetyandhealth.org
Telephone: 202-434-1160
Fax: 202-434-1105**

Developed in 2013 and revised in 2017.