OSHA Updates that **YOU** Need to Know

**OSHA New Retaliation Standard**

A new anti-discrimination and anti-retaliation rule will come into effect on November 1, 2016 for all employers. Employees must be informed about the requirements of the anti-retaliation rule relating to reporting injuries and illnesses by that date.

OSHA’s interprets this rule broadly to prohibit mandatory *post-accident drug testing*, concluding that such tests discriminate against employees on the basis of injury and illness reporting. OSHA further explains that *incentive programs* are retaliatory if they offer benefits to employees or workforces that reward employees based on the number of injuries and accidents. Finally, OSHA uses the rule-making to allow compliance officers to issue *citations for retaliation*, upending the current statutory employee retaliation enforcement framework under Section 11(c) of the Act.

**Drug Testing**

The new standard from OSHA will prohibit any “adverse action that could well dissuade a reasonable employee from reporting a work-related injury or illness.” OSHA applies the prohibition to any “blanket post-injury drug testing policies deter proper reporting,” concluding that drug-testing alone constitutes an “adverse employment action.”

OSHA explains with examples: it “would likely not be reasonable to drug test an employee who reports a bee sting, a repetitive strain injury, or an injury caused by a lack of machine guarding or a machine or tool malfunction.”

**Incentive Programs**

The new rules explain that “it is a violation of paragraph (b)(1)(iv) for an employer to take adverse action against an employee for reporting a work-related injury or illness, whether or not such adverse action was part of an incentive program.” OSHA’s interpretation prohibits all programs in which employees are denied a benefit on the basis of any injury or illness report. For example, if an entire shift loses a safety bonus due to a single employee being injured.

However, an incentive program *may* make a reward contingent upon, for example, whether employees correctly follow legitimate safety rules, rather than whether they reported any injuries or illnesses. OSHA further encourages incentive programs that promote worker participation in safety-related activities, such as identifying hazards or participating in investigations of injuries, incidents, or “near misses.”

**New Retaliation Rules**

OSHA also says that employer policies requiring an employee to immediately report an injury or be disciplined may also be retaliatory. OSHA believes that immediate-reporting policies will chill employees from reporting slow-developing or chronic injuries or illnesses, such as musculoskeletal disorders or poisoning from prolonged lead exposure. According to OSHA, to be reasonable, a policy must allow for reporting within a reasonable time after the employee realized that he or she had suffered a work-related injury, rather than just immediately following the occurrence of an injury.

Access Point is following these new OSHA regulations closely and will continue to inform each client and assist in developing or revising client policies in order to maintain their OSHA compliance.

In the meantime, if you have any questions or need any assistance please do not hesitate to contact the Safety and Risk Department at (866) 513-3861.