



**United Steelworkers  
Health, Safety & Environment Department**

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

**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 monthly 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 300 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, physical and work organization factors. Hazards that are not eliminated or reduced will go on to hurt or maim additional workers.

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

An 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 worker reports of 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 \_\_\_\_\_ 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.”*
- *Following an Ohio company’s receiving 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 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 Programs and Injury Discipline Policies Are Worksite Hazards That Should Be Eliminated**

Safety incentive programs that in whole or in part 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 deserve to be eliminated.

### **AFL-CIO Resolution – Opposes Reward and Discipline Programs for Job Injury and Illness**

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 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 harmful 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:

#### **Request to Bargain**

Unions should consider requesting to bargain, and submitting information requests. Under the National Labor Relations Act (and many state’s labor laws) employers are prohibited from making unilateral changes in wages, hours and conditions of work (including health and safety) without notifying the union and providing an opportunity to bargain. Prizes in safety incentive programs may be viewed as “wages,” discipline in “injury discipline programs” is a “condition of work.” See USW’s factsheet “*Bargaining Over Injury Discipline Policies: Submitting Information Requests*” for more specific information about bargaining law (including mid-term bargaining), requesting to bargain over these programs, and the importance of filing information requests. Regarding safety incentive programs: employers’ safety budgets should be devoted to the identification, elimination and control of hazards, and to training on hazard recognition and control. If

employers want to give cash and prizes to workers related to safety, unions could bargain rewards for workers who identify serious health or safety hazards, or make recommendations on specific ways to eliminate or control job-site hazards.

### Use OSHA's Recording Keeping Standard That Prohibits Employer Discrimination Against Workers Who Report Injuries or Illnesses

OSHA's Recordkeeping Standard (29 CFR 1904) has a provision (20 CFR 1904.36) that states,

*"Section 11(c) of the [Occupational Safety and Health] Act prohibits you [the employer] from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Part 1904 records or otherwise exercises any rights afforded by the OSH Act."*

This provision of OSHA's Recordkeeping Rule suggests that safety incentive programs (that deny rewards to workers when they report an injury) and injury discipline policies (that threaten or provide disciplinary action or automatic drug testing when a worker reports an injury) may violate Section 11(c) of the Occupational Safety and Health Act.

Section 11(c) of the OSH Act states:

*11(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.*

### How To File A Complaint With OSHA About Employer Retaliation For Health and Safety Activities

- Complaints about retaliation – including complaints by workers who were denied prizes/rewards or were threatened with or received discipline because they reported an injury -- can be filed with OSHA.
- The 11(c) discrimination complaint can be a brief letter [there is no federal OSHA 11(c) form; states with OSHA State Plans may have specific forms for discrimination complaints] with a statement that includes:
  - who the employer is
  - what OSHA right was exercised (note the worker's report of a symptom, injury or illness and refer to 29 CFR 1904.36 of OSHA's Recordkeeping Rule, concerning workers' rights to report job injuries and illnesses without being discriminated against) that caused the retaliation
  - what specifically the retaliation was

- the date you reported the injury/illness and the date you were discriminated against by not receiving a prize/reward or suffering disciplinary action (this could include having to sit in a “counseling session” on “how to be a safer worker” as the first step on a progressive discipline track)
  - You do not need to send copies of documents or other evidence with your complaint, but do describe any evidence you have (such as the specifics of the safety incentive program or the injury discipline policy in place in your workplace)
- 11(c) complaints must be filed within 30 days of the “adverse action” (not receiving a reward, or receiving disciplinary action).
- Local unions can assist members in writing and filing OSHA 11(c) discrimination complaints. If an employer has or implements a safety incentive program and/or injury discipline policy, unions can consider informing the employer that the union will be assisting members in submitting OSHA 11(c) discrimination complaints for each discriminatory act that occurs as a result of the policy or practice. OSHA has special 11(c) discrimination complaint investigators who investigate these complaints. Call 1-800-321-OSHA if you need to identify the OSHA office closest to you. It is always best to file OSHA complaints by certified mail (return receipt requested), because you will have a record that the complaint was received by OSHA.