Does Your Safety Incentives Program Violate OHS Laws?



Like many companies, you may offer workers incentives for meeting specific safety goals. Such incentives can range from hefty money bonuses to more modest rewards like movie tickets and pizza parties. While they may seem positive and constructive, safety incentive programs are highly controversial. They may also be illegal to the extent they result in the under-reporting of injuries.

The Law of Safety Incentives

Neither the OHS nor workers' comp laws specifically address incentive programs. What they do say, however, is that employers must maintain records of and report the work-related injuries and illnesses (which we'll refer to collectively as "injuries") that their workers suffer to the government, as well as to the workplace Joint Health and Safety Committee (JHSC) or Health and Safety Representative. For the system to function properly, workers must feel free to let their companies know when they get injured on the job.

The concern with incentive programs is that they actually encourage workers not to report their injuries. Because safety incentives are generally based on group performance, they may exert peer pressure on workers to "suck up" minor ailments rather than putting the group's rewards at peril by reporting them. Lawyers warn that discouraging workers from reporting work injuries, whether deliberately or inadvertently, would

likely constitute a violation of the employer's injury reporting and investigation duties under OHS and workers' comp laws. Disqualifying workers from entitlements to incentive rewards because they report a workplace injury may also be a form of illegal retaliation, reprisal or "discrimination" banned by OHS laws.

There are also larger ramifications. Discouraging workers from reporting injuries sets off a chain reaction of under-reporting that continues with the employer's not reporting work injuries to governmental authorities. Workers' comp boards and OHS agencies then rely on this employer data to track and publicly report work injury totals, rates and long-term trends in their respective jurisdiction. **End Result:** The statistics that drive government policy, lawmaking and enforcement suggest that workplaces and workers are safer than they actually are.

Practical Impact on Safety Incentive Programs

This is not to suggest that employers should never offer safety incentives because they're illegal. The takeaway is that incentive programs may be problematic if they're designed improperly. **Bottom Line:** As long as you understand where the lines are drawn, you can design (or redesign) safety incentive programs that won't get you into trouble. Here are the 4 criteria to use to vet the legality of your own safety program.

1. **Don't Offer Improper Safety Incentives**

Check your program and make sure it doesn't offer any kinds of rewards that might cause workers to not report an injury. Examples of problematic practices to avoid:

- Awarding prizes or entering workers into a prize drawing for going a certain period without a recordable injury

or keeping recordables below a specific level.
- Rewarding the department or unit that goes a certain period with the lowest number of recordables.
- Basing workers' salary, wages, bonuses, or other compensation on recordable injuries.
- Awarding bonuses or raises to supervisors if their unit goes a certain period with low or no recordables.

2. **Reward Safe Behaviour**

Rather than low recordables, offer incentives that reward workers for engaging in positive behaviours that promote safety, such as:

- Successfully completing safety training.
- Participating in inspections, JHSC meetings, or other safety activities.
- Offering good suggestions for improving safety.
- Reporting incidents, near misses and injuries.

3. **Don't Punish Workers for Getting or Reporting Injuries**

While punishing workers because they report or suffer injuries is strictly illegal, you're still allowed and required to enforce your safety rules. Example: A worker deliberately disables a conveyor machine guard to clear a jam and suffers an entanglement injury. The fact that the worker reported the injury doesn't make the worker immune to discipline for committing a safety violation.

4. **Implement a Non-Retaliation Policy**

Create and implement a Non-Retaliation Policy that assures workers that they won't suffer discrimination or adverse treatment because they report injuries, illnesses or near misses or exercise any of their other rights under OHS laws.

5. **Implement a Near-Miss Reporting Policy**

Near misses are 'almost' incidents that could've resulted in

serious injuries or property damage but didn’t. It’s easy for workers to ignore or not report near misses. After all, no harm was done. But near misses are opportunities to address safety issues before harm **is** done. So, create and implement a Near-Miss Incident Reporting Policy and Procedure.