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May 3, 2016

Mr. Bill Perry
U.S. Department of Labor
Occupational Safety & Health Administration
Director of Standards and Guidance
200 Constitution Avenue, N.W.
Washington, DC 20210

***BY REGULAR MAIL
And E-MAIL***

Re: OSHA Safety and Health Program Management Guidelines (November 2015 Draft)
OSHA 2015-0018

Dear Mr. Perry:

In November 2015, the Occupational Safety and Health Administration (“OSHA”) issued a revised draft of OSHA Safety and Health Program Management Guidelines (the “Draft Guidelines”). On page 8 of the Draft Guidelines, it states in a note that, “Incentive programs for workers or managers that tie performance evaluations, compensation, or rewards to low injury and illness rates can discourage injury and illness reporting. Point systems that penalize workers for reporting injuries, illnesses, or other safety or health concerns have the same effect, as can mandatory drug testing after reporting injuries. Effective safety and health programs recognize positive safety and health activities, such as reporting hazardous conditions or suggesting safer work procedures.”

The Incentive Federation, Inc. (the “Federation”), through its undersigned counsel, hereby files this comment letter that takes exception to OSHA’s unwarranted and unjustified broad criticism of safety incentive programs. The Federation is a trade association whose members consist of other trade associations and some of the most prominent corporations in the United States. The Federation’s address is:

Mr. Stephen Slagle
Managing Director
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3309 Three Iron Drive
Seneca, SC 29678

The Federation's member companies regard and treat safety as a crucial concern, because of its direct impact on their clients' financial health. Effective safety programs play a critical role in reducing worker injuries, save money, and improve employee morale considerably. According to a news release dated October 29, 2015 from the U.S. Bureau of Labor Statistics ("BLS"), there were approximately 3 million nonfatal workplace injuries and illnesses in the United States in 2014, which translated to a rate of about 3.2 cases for every 100 full-time workers. These figures were derived from the Survey of Occupational Injuries and Illnesses that the BLS conducted, and the rate reported for 2014 continued a pattern of declining injuries that occurred annually for the twelve-year period from 2003 through 2014, with the exception of 2012. These injuries cost employers in several respects: (a) lost productivity, (b) increased worker's compensation claims (and the corresponding increase in insurance premiums), (c) damaged equipment, (d) poor employee morale and retention, and (e) litigation. In several industries where injuries are common, for example, contracting, handling baggage, trucking, heavy manufacturing and chemical processing, the cost of injuries can be staggering. Indeed, as OSHA itself is well aware, even injuries from repetitive motions can keep employees off the job for significant periods of time, even though these types of injuries do not necessarily involve much exertion.

Safety programs are an extremely effective means of reducing all types of workplace injuries. When they are implemented properly, they have a multitude of salutary effects. As the BLS Survey cited above recognizes, the total number of injuries to workers has been dropping for over a decade, in large part due to the fact that many companies, especially larger ones, have adopted safety programs. States have begun to recognize that safety programs can have a dramatic impact on expenses related to safety. For example, Florida, Missouri, and Oklahoma, and Pennsylvania give credits to employers on their worker's compensation premiums if they have in place certified safety programs that reduce the number of injuries, illnesses, and lost days of work. While state programs vary in their approach, they recognize the benefits of various types of effective safety programs and their importance in reducing workplace injuries.

In spite of considerable evidence to the contrary, OSHA appears to believe that safety programs are suspect, because they might lead to the underreporting of injuries, especially if employees come to believe that they must hide injuries they fear will tarnish their safety records. Broadly speaking, there are two basic types of safety programs. OSHA refers to one type as a "rate-based program," *i.e.*, one that sets targets to achieve low injury rates and provides rewards such as bonuses and prizes for having no or a low number of work-related injuries and illnesses during a specified period. An example of this type of program is one in which an employer may reward workers with \$100 bonuses or merchandise for having no reported work-related injuries or illnesses in a given time period. The second type is a "behavior-based program," *i.e.*, one that provides employees rewards for attending safety meetings, reporting near misses, and practicing and demonstrating safe behaviors. This second type of safety program is not tied to low injury and illness rates or to the reporting of injuries. For example, an employer may reward workers with merchandise for identifying hazardous conditions and suggesting safety improvements. (Behavior-

based programs may also include demerit systems that discipline workers for failing to exhibit safe behavior or conduct.) In reality, the two categories of programs overlap somewhat in that the goal of behavior-based programs is to reduce workplace injuries.

Even though OSHA has been suspicious of, and occasionally hostile toward, safety programs, it has found that there is little to no definitive rigorous and systematic research with statistically significant empirical data on the effects of safety incentive programs and other workplace safety policies on workers' reporting of injuries and illnesses. Nonetheless, it has been suggested that rate-based programs may discourage reporting. That can often be the case when an incentive creates peer pressure on workers to not report injuries. For example, a poorly designed safety program may reward all of the workers on a group or team only if no member of the team has an injury. It is not difficult to see that such a program would exert pressure on team or group members to avoid reporting injuries, especially if program rewards are sufficiently large. While that is possible, it does not necessarily have to be the case.

Well-designed safety incentive programs would tend to emphasize safe conduct or behavior, and they would reward workers for individual rather than group conduct. Moreover, even behavior-based programs can and should lead to the reduction of workplace injuries, which is the ultimate goal of such programs. In contrast to rate-based programs, however, behavior-based safety programs that lead to the reduction of reportable injuries and illnesses are aimed at individuals, encourage safe conduct and practices and should foster open communication about safety issues and should encourage the reporting of injuries and illnesses.

Like all other safety tools, safety achievement programs can certainly be misused. When programs are designed and used properly, however, they are extremely important in reducing workplace injuries. Any employer facility that tolerates the nonreporting of injuries is probably beyond the assistance of a safety incentive program. A program (and awards under that program) should never become more important than safety and respect for the well-being of an employee. When injuries are not reported, the employer is very clearly sending the wrong message to its workers and, at a minimum, must reevaluate the type of safety program it is using.

A properly designed program has several features. First and foremost, it is nothing more than a tool to assist an employer in attaining its goal of a safer, healthier, and more productive work environment. It can never be a substitute for training, safety meetings, safety equipment, management involvement in safety issue, and genuine management concern for safety. A good safety incentive program would assist in enhancing a culture of work safety that is already in place before any of the incentives that are part of the program can have any beneficial effect. Thus, a good safety incentive program often focuses on proactive behavior. For example, it might encourage employees to make safety suggestions, attend safety meetings, promote safety awareness, participate in safety inspections, report safe as well as unsafe behavior, report near misses, and so forth.

In addition, self-directed safety teams, where employees observe each other at work and report good and bad safety conduct (without necessarily using the names of specific employees), tend to encourage safer behavior. Encouraging this type of employee participation is extremely useful, because employees are reasonably objective in observing their peers, and they report good and bad behavior. The conduct that employees observe can then be included in periodic reports or reviewed in safety meetings to stress and reinforce safe conduct. Proactive programs have proven efficacy in reducing injuries in the workplace. In other words, with an incentive program in place, all of a sudden, an employee is rewarded for paying attention to safety, and making others do so as well, because (s)he is rewarded for his or her conduct.

While the prize or award is certainly the catalyst for ensuring worker participation, no program can be remotely successful without building trust and teamwork among workers. With that in mind, some programs rely on low-cost with a perceived high value to reinforce teamwork through corporate awareness. For example, a trucking company could give a driver with no accidents over a period of time a specially imprinted jacket. A good safety program would also encourage participation as widely as possible by distributing incentive as widely as possible by distributing incentives broadly. A safety incentive program that rewards but a few individuals only will not motivate workers to exhibit proper safe behavior.

There is no panacea for reducing injuries at work. A properly designed safety incentive program is an important asset for employers that want to improve their safety record. Far from discouraging the reporting of injuries, these programs motivate employees to be proactive in achieving safe work practices. While there are many types of beneficial safety incentive programs, a few common themes run through such programs:

1. They create a brand name for safety.
2. They use every method at their disposal to engage with workers to promote an employer's safety brand.
3. They use tangible awards (merchandise) to provide face-to-face recognition.
4. They communicate goals for groups, but they reward individual behavior only.
5. They measure results and make changes dictated by those results.
6. They reward for proactive safe behavior and performance.

Although OSHA may be skeptical about taking performance into account (item 6), the results are powerful. Programs that focus strictly on rewarding for proactive behavior will greatly underperform those that also include an element of rewarding for performance as well. Programs that focus strictly on rewarding proactive behavior will greatly underperform those that also reward workers for performance as well. Even when incentives are used, only 10-25% of the workforce will participate in additional proactive safe behavior. While this is greater than without incentives, it falls short of what an employer would need to create a substantially safer work environment. Creating truly safer environment requires as close to total employee participation as possible among all safety

sensitive workers. That is unlikely to be achieved without a program that rewards for consistent daily safe work performance as well as recognizing proactively safe behavior.

Likewise, there are several themes that run through poorly designed safety programs. Poorly designed programs exhibit the following characteristics:

1. They use cash or cash equivalents, which employees often view as additional compensation and which do not reinforce the desired safe conduct.
2. They reward groups for group behavior, thereby creating pressure not to report injuries.
3. They use large value awards and are targeted to a small number of employees.
4. They incorporate elements of chance in the program, which is the opposite of rewarding an individual for specific safe behavior.

In sum, a good safety incentive program will raise worker awareness of safety matters, reduce injuries *without causing workers to avoid reporting injuries*, and instill active participation and behavior among employees that would lead to a safe work environment. A broad critique of safety programs to assert that they cause employees to hide injuries is not supported by empirical evidence and is unwarranted. In a few, isolated cases, safety programs have undoubtedly been misused to hide injuries. Indeed, as mentioned above, the two most common problems with an improperly designed safety program that could lead to hiding injuries are the use of high value awards and the reliance solely on group behavior in awarding prizes. Also as described above, however, any safety incentive program that is designed reasonably well would avoid these pitfalls and focus on rewarding safe behaviors the adoption of which would ultimately produce a good safety record.

There is nothing inherent in safety achievement programs that could lead OSHA or anyone else to the unsupported conclusion that safety incentive programs lead to the underreporting of injuries per se. Safety incentive programs, properly designed to avoid the obvious shortcomings that could lead to underreporting of injuries, have produced excellent results in improving workplace safety for the long-term. Successful safety incentive programs promote proactive behavior by employees as the paramount concern of the program. They encourage teamwork among employees, but they also give awards based on individual performance. Some steps that employers have taken to ensure the success of a safety incentive program are promoting safety awareness among employees, rewarding employees for making safety suggestions, recognizing safe behavior by employees, making employees “partners” in designing the safety programs, and using the data collected as a result of the program to eliminate safety hazards and make the work environment safer.

All of us, including employees, want to be recognized and rewarded for good performance. Good safety achievement programs are no different than other motivational tools. They recognize employees for good work, in this case in the area of safety. As such, safety incentive programs succeed in motivating employees to achieve the goal of helping to create a safer workplace environment. Employers that use properly designed safety incentive and recognition programs

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improve their safety performance dramatically and at a much faster pace than those that do not use them. Employers who use safety programs have better morale and higher retention rates among workers, save money from costs related to accidents and absent workers, and they can pass some of the benefits of the cost savings to their workers in the form of higher wages.

Given the considerable benefits of well-designed safety incentive programs, there is no justification for OSHA to place a stigma all such programs merely because it *believes* that some programs might lead to the underreporting of workplace injuries. Doing so is unwarranted, unjustified, unsupported by empirical (rather than anecdotal) evidence, and would not produce the result that OSHA desires, the reduction of injuries in the workplace. If anything, eliminating or discouraging the use of well-designed safety incentive programs is likely to lead to a more dangerous workplace.

I thank you for the opportunity to provide these comments with respect to OSHA's evolving views of safety incentive programs as part of the process of updating its Safety and Health Program Management Guidelines. I urge you to contact me as you make final updates to the Guidelines if you have any questions or require any additional information regarding the positive effects of well-designed safety incentive programs. You can reach me at the telephone number above, or by e-mail at gdelta@deltalaw.net.

Very truly yours,

INCENTIVE FEDERATION, INC.

George B. Delta
Executive Director and General Counsel