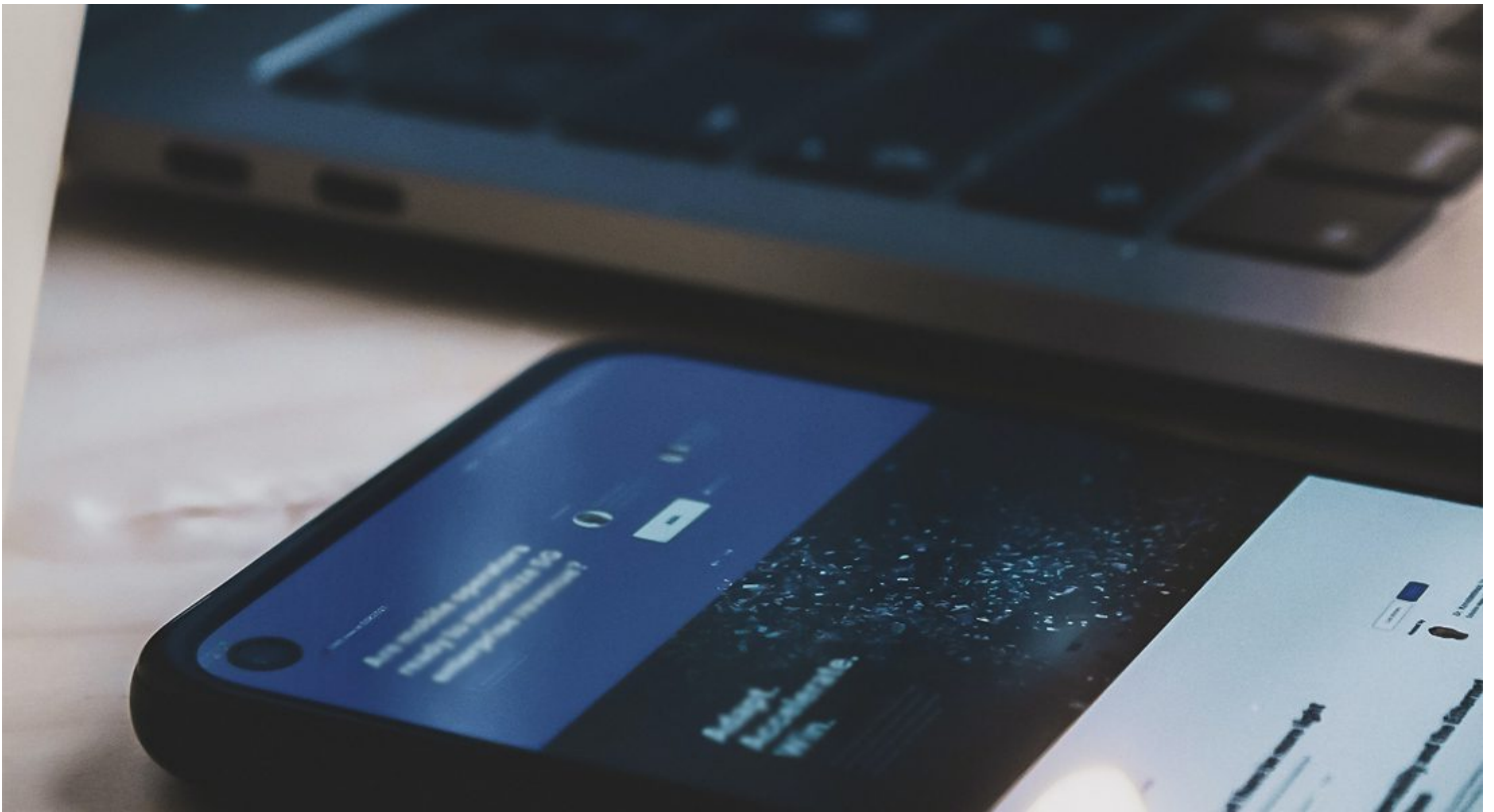


NEWS & INSIGHTS

OSHA Reverse Course on Post-Incident Drug Testing and Safety Incentive Programs

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Recently, the Occupational Safety and Health Administration (OSHA) issued a memorandum clarifying a May 2016 final rule that significantly curtailed the ability of employers to offer workplace safety incentive programs and to conduct post-incident drug testing of employees. The new guidance from OSHA explicitly states that workplace safety incentive programs and post-incident drug testing do not violate OSHA-enforced regulations provided that the programs and testing are undertaken to promote workplace safety and not to penalize an employee for reporting a

work-related injury or illness.

Given OSHA's change in position, employers are free to implement or re-implement workplace safety incentive programs provided certain precautions are in place. For example, a rate-based incentive program that rewards employees with a prize or bonus at the end of an injury-free month is acceptable as long as the employer counter-balances the program with employee training that emphasizes reporting rights and responsibilities and the employer's non-retaliation policy.

Employers are also free to implement or re-implement post-incident drug testing for purposes of evaluating the root cause of a workplace incident that harmed or could have harmed employees. However, if the employer utilizes drug testing in this instance, all employees whose conduct could have contributed to the incident must be drug-tested, not just the employee(s) who reported injuries.

OSHA's clarification should be welcome news for most employers. However, employers must remain vigilant in taking steps and implementing programs to ensure employees are not retaliated against for reporting workplace injuries or illnesses. The Employment Law Group at Saxton & Stump can ensure that your workplace incentive programs and drug testing policies are legally compliant. If you are interested in connecting with our Employment Law Group, please contact Richard Hackman, Esq. at rlh@saxtonstump.com or 717-556-1006 or Stephen J. Fleury, Jr., Esq. at sjf@saxtonstump.com or 484-328-8553.

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