RIMS 2015
ANNUAL CONFERENCE & EXHIBITION >> APRIL 26-29
NEW INNOVATIONS >> NEW ENCOUNTERS >> NEW KNOWLEDGE
WWW.RIMS.ORG/RIMS15
Safety Incentive Programs and the Regulatory Environment
(Session RIC011)

Speakers:
Patrick J. Karol, Safety and Risk Manager, Aramark
Allan Hemphill, Shareholder, Brown Sims
Learning Objectives

At the end of this session, you will:

• Understand Importance of Safety Employee Incentive Programs
• Understand OSHA’s Involvement and Why
• How to Build a Successful Program Learning
Value of Incentive Programs
Defined As...

Incentive  *(in-sen-tiv)*

Noun – a reward or promise that encourages or motivates a person to take a certain action.
Too Often…

- Based in lagging indicators
- Cash prizes
- Some winners, lots of losers
- Based on chance
Why?

NEW COMPANY INCENTIVE PROGRAM

DO WHAT THE BOSS TELLS YOU TO DO TODAY

AND YOU CAN COME BACK TO WORK TOMORROW
Psychology of Safety

The consequences of an act affect the probability of it’s occurring again.

-B.F. Skinner
The Slippery Slope

Disciplinary Action…
as Corrective Action…
designed to change behavior

The beatings will continue until morale improves
The Slippery Slope

Linking chance to Safety is undesirable
It’s Just a Flesh Wound
OSHA’s Role

- OSHA’s declared purpose → “stimulate employers and employees to institute new and perfect existing programs.”
- General requirements of employers:
  - Collect, maintain, and report records of injuries.
  - Do not retaliate against employees for reporting unsafe conditions.
- Safety Incentive Programs → programs facially designed to “stimulate” employees to safe work.
- OSHA’s Concern → Safety incentive programs may discourage reporting or operate as a form of retaliation.
OSHA’s Role
Whistleblower Protection

• **OSHA Sec. 11(c)(1) protects whistleblowers:**
  – No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted … any proceeding under or related to this Act or has testified or is about to testify … on behalf of himself or others … OSHA § 11(c)(1); 29 U.S.C. § 660(c)(1). See generally; 29 U.S.C. § 1977.

• **The regulations extend this protection to employees who report injuries:**
  – Section 11(c) of the Act prohibits you 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. 29 C.F.R. 1904.36.
Whistleblower Protection

• General Principals:
  – Employees can be discharged for legitimate reasons.
  – However, a discharge involving legitimate reasons is retaliatory if protected conduct was a substantial factor in the decision.

• The Federal Railroad Safety Act and other statutes afford similar whistleblower protections.
Reporting

• Employers Must:
  – Establish a system for the prompt reporting of injuries and explain that system to employees. 29 C.F.R. 1904.35(a) and (b).
  – Keep records of lost time injuries. 29 U.S.C. Sec. 657(c)(2); 29 C.F.R. 1904.7.
  – Share those records with OHSA and employees. 29 C.F.R. 1904(a)(2).
Reporting / Whistleblower Issues

• OSHA Memorandum of March 12, 2012 Addressing “Incentive and Disincentive Policies and Practices.”
  – Discipline of any injured employee → Violates 11(c).
  – Discipline of an injured employee for failing to report injury in the required time and manner → May violate 11(c).
  – Discipline of an injured employee for violation of safety rules → May violate 11(c).
  – Employee Safety Incentive Program → May violate 11(c).
• When an employee reporting injury (and his workgroup) is disqualified from incentive it “could be considered unlawful discrimination.”
• Consider whether the incentive was of sufficient magnitude that failure to receive it might have dissuaded reporting.
VPP

• OSHA’s Voluntary Protection Programs (VVP):
  – Goal → Provide a mechanism by which management, labor, and OSHA work cooperatively to avoid injuries.
  – Methods → Worksite analysis, hazard identification/control, and training.
  – Logistics → Entirely voluntary. Employer Applies, OSHA conducts onsite evaluations, and programs compliant with OSHA directives are implemented.
  – Rewards → Claimed reduction in lost time events and exemptions from programmed inspections.
VPP

- OSHA’s VVP Policy and Procedure Manual:
  - Incentive Programs. The review of incentive programs must focus on ensuring that any incentive programs in operation are not based solely on providing awards to employees for the reduction or absence of safety or health incidents. Instead, these programs should be innovative, positive, and promote safety awareness and employee participation in safety-related activities. The onsite evaluation will focus on the incentive program’s potential impact on the accuracy of reporting, injury and illnesses data.

- OSHA Policy Memoranda (including Memorandum #5) provide guidance on when incentive programs are a disincentive to reporting and “worker involvement”.

VPP

• In general, whether an incentive program is acceptable to VPP requires consideration of:
  – Whether injury or illness is the sole factor in the incentive determination or one of many.
  – Whether the persons rewarded are those likely exposed to occupational hazards or are executive level personnel.
• Ultimate inquiry: Does program operate as a disincentive to reporting?
VPP

• Programs Consistent with VPP:
  – Providing tee shirts to workers serving on a safety and health committee.
  – Offering (modest) rewards for suggesting ways to strengthen safety and health.
  – Throwing a party for the successful completion of company-wide safety and health training.

• Programs at Odds with VPP:
  – Awarding paid time off to a unit that has the greatest reduction in workforce incidents.
  – Rewarding workers with a celebration for meeting an injury rate reduction goal.
  – Rewarding workers for maintaining an injury free workplace for a period of time.
VPP

• Programs Requiring Closer Scrutiny:
  – Providing rewards to a president or vice president for meeting local worksite injury goals.
  – Providing rewards to all employees for meeting objectives in a corporate wide performance model where injury and illness rates are one factor.
  – Providing rewards to employees for meeting objectives in a performance model that includes injury and illness as one factor when the model spans multiple worksites.
Incentive Plan Components

1. Define the *Behaviors* YOU want
2. Who is Eligible?
3. What is the Reward?
4. Timing of Reward, Termination
5. Track Performance
Hallmarks of a Successful Plan

- Specific behaviors are communicated and trained
- Participants control the behavior
- Does not link safety to chance
- Rewards are “soon, certain and positive”
- Employees had input
Watch Areas

• Ineffective
• Entitlement
• Routine
• Punitive
• Irrelevant
OSHA Proof?
Thank You