

INSIGHTS

## Bonuses Tied to Low Injury Rates: Will They Be Unacceptable to Biden's OSHA

July 16, 2021

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In 2016, the Obama-era Occupational Safety and Health Administration (OSHA) issued regulations prohibiting employer retaliation against employees for reporting workplace injuries or illnesses. The regulations' preamble indicated that, under many circumstances, employee bonuses or other incentives tied to low injury rates could constitute unlawful conduct under the Occupational Safety and Health Act.

Then, in 2018, Trump-era OSHA officials issued a memorandum partially stepping back from the preamble's restrictive guidance. Now, President Biden has selected individuals for key OSHA positions who have been outspoken critics of incentive programs tied to low injury rates.

So what exactly is OSHA's current position and where will the Biden-era OSHA land on these incentive programs?

Bob Nichols and Amber Dodds explain and offer recommendations for how to structure an incentive program consistent with both OSHA's current guidance as well as the approach likely to be adopted by the new Biden team at OSHA.