

Matthew Deffebach in Business Insurance: OSHA Drug Testing, Incentive Proposal may Bring Relief to Employers

May 29, 2019 Matthew Deffebach

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Business Insurance quoted Haynes Boone Partner [Matthew Deffebach](#) in an article about the fate of the U.S. Occupational Safety and Health Administration's proposal to enshrine that employers may establish workplace safety incentive programs and post-incident drug testing.

Here is an excerpt:

The Trump administration's proposal to enshrine its stance that employers are not prohibited from establishing workplace safety incentive programs or post-incident drug testing in a standard could reassure employers that such programs are legitimate, but much depends on the eventual language and whether the proposal moves forward despite a crowded regulatory agenda and the 2020 presidential elections, experts say.

"I thought it was very interesting, because it looks to me like it's consistent with the memo that they issued in October 2018 clarifying their position, now taking the position that post-accident drug testing and safety incentive programs are reasonable, that they are valuable for employers if applied consistently," said Matthew Deffebach, Houston-based partner and head of the labor and employment practice group at law firm Haynes Boone. LLP.

OSHA previously amended the electronic record-keeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA forms 300 and 301, but these establishments are still required to submit information from their Form 300A summaries, including confidential business information.

"I think the criticism when they rescinded part of that rule on the uploading of the OSHA logs in January was ... 'why not rescind it more' applying to the antiretaliation provisions as they relate to drug testing and safety incentive programs?" Mr. Deffebach said. "I think this is a signal that the administration would intend to do that. The next step is to revert back to the status quo before the rule, because right now it's just guidance."

But the memo was helpful for employers that did not make significant changes to their drug testing or safety incentive programs in response to the original rule, he said.

"I think they see it as really good news," he said. "Even if not the law, it's an indication that they're not going to be cited by the agency if there was an investigation."

To read the full article, click [here](#).