



## Construction Industry Round Table

## Regulatory News

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### 12/20/2016 – OSHA New Anti-Retaliation Rule Goes Into Effect Regarding Drug-Testing

The Occupational Safety and Health Administration anti-retaliation provisions in its [injury and illness tracking rule](#) took effect on Dec. 1, 2016; after the Federal District Court in Northern Texas denied a preliminary injunction to prevent the rule's enforcement to proceed. The new OSHA rule prohibits employers from retaliating against employees for reporting work-related injuries or illnesses: (1) OSHA warns employers against disciplining an employee who reports a work-related injury or illness under the pretext that the employee violated a work rule; (2) OSHA warns against safety incentive programs that deter employees from reporting injuries or illnesses, and (3) OSHA contends that post-incident drug testing is allowed if there is a reasonable possibility that drug use contributed to the report or illness. [*However, if drug use could not have contributed to the injury, post-incident drug testing would be prohibited retaliation (How one would know drug use played no part, without testing, is not explained by OSHA)].*

Private sector firms have argued that the anti-retaliation provisions unlawfully limited employer safety incentive programs and post-incident drug testing programs, to wit, some sought a preliminary injunction to prevent these provisions from taking effect. On November 28, 2016 the Federal Court denied the motion, but did not rule on or prejudice consideration of a "Permanent Injunction" on the anti-retaliation provision.