



EEOC Issues Final Rules Regarding Workplace Wellness Programs To Better Align HIPAA's Employee Wellness Program Goals And EEOC's Goals

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The Equal Employment Opportunity Commission (EEOC) issued two final rules regarding employer-sponsored wellness programs. The issue arose at the intersection of the Health Insurance Portability and Accountability Act (HIPAA), the Affordable Care Act (ACA), the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA). More specifically, HIPAA encourages employers to establish workplace wellness programs that offer various incentives to employees and their family members who provide certain health information. Meanwhile, the ADA protects individuals from disability discrimination, including in the workplace, and GINA protects workers from adverse employment actions based upon their genetic information. The EEOC had become concerned that employer-sponsored wellness plans, especially those that solicit information about employees' family members, could violate the ADA and/or GINA by allowing employers to discriminate against employees with disabilities and/or employees who are associated with disabled individuals. In order to clarify when such wellness plans are permissible, the EEOC issued two rules. The ADA-related final rule provides that wellness programs that are part of a group health plan and that ask questions about employees' health or include medical examinations may offer incentives of up to thirty percent of the total cost of self-only coverage. The GINA-related final rule also caps the incentive attributable to a spouse's participation in a wellness program at thirty percent of the total cost of self-only coverage. Unfortunately, the EEOC's final rules still do not align with the Patient

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Protection and Affordable Care Act (PPACA). For example, the EEOC's final rules limit the wellness program incentive to thirty percent of self-only coverage, even though PPACA expressly permits employers to offer incentives based on the cost of the wellness program the employee selects, which could be self-only or could include family coverage. Given the potential for confusion and non-compliance, employers are encouraged to carefully review their wellness programs to ensure that such programs comply with the myriad of rules which now apply. The final rules become effective beginning on the first day of the plan year that begins in 2017.