

EEOC Publishes Proposed Rules for Employer Wellness Programs

Labor & Employment Law Update

on April 22, 2015

The EEOC officially published proposed rules applying the Americans with Disabilities Act (ADA) to employer wellness programs on April 20, 2015. The public comment period ends June 19, 2015.

Wellness programs, often offered as part of group health plans, are programs designed to improve employee health and reduce health care expense. Wellness programs vary widely and may include incentives encouraging employees to participate in smoking cessation or weight loss programs, or undergo health risk assessments or biometric screenings.

Despite rules applicable to wellness programs issued under HIPAA and the ACA, the EEOC filed high profile lawsuits in recent years, arguing employer wellness plans amounted to disability-related inquiries or medical examinations, both of which are prohibited by the ADA.

The proposed rule, which can be found [here](#), provides guidance and a measure of certainty for employers who have wellness programs in place or who wish to implement them.

The proposed rule permits employers to offer incentives to employees who participate in wellness programs or who achieve certain health outcomes as long as:

- the program is truly voluntary (i.e. employees cannot be required to participate, denied coverage if they choose not to participate, or subjected to adverse employment actions for choosing not to participate or for failing to achieve certain goals or health outcomes);
- the program is designed to promote health or prevent disease and therefore must generally provide useful feedback to the employee or assist the employer in offering programs matched to the needs of its workforce;
- any incentives offered (financial or in-kind) do not exceed thirty percent of the total cost (employee-paid plus employer-contributed) of employee-only insurance coverage (this is consistent with the maximum allowable incentives under HIPAA and the ACA);

- the employer provides reasonable accommodation to allow employees with disabilities equal opportunity to participate in the programs and to earn incentives;
- medical information is kept confidential and shared with the employer only in an aggregate form not reasonably likely to disclose information specific to any individual employee; and
- the employee receives notice of what medical information will be obtained, who will receive the information, how the information will be used, the restrictions on disclosing the information, and the methods in place to prevent improper disclosure.

Although not yet final, the proposed rules provide much needed clarification and helpful guidance to employers and benefits professionals.

EEOC Publishes Proposed Rules for Employer Wellness P- rograms