

Final Rules Are In: EEOC Releases Guidelines for Employer Wellness Programs

Wellness programs are all the rage in the corporate world, because they promise double-digit returns on investment and very little upfront material or cash costs. They also promise big reductions in healthcare costs.

But here's the catch – you **only see those great returns if your employees participate in your wellness program**. And the government has said many times that **you can't force employees to participate** if they don't want to.

The government is sticking by that and many other regulations in the latest and final wellness plan rules that the Equal Opportunity Commission ("EEOC") issued on May 17, 2016, as they pertain to Title I of the American's with Disabilities Act ("ADA").

Before issuing these final rules, the EEOC hadn't defined "voluntary" or what is considered a "health program", leaving employers to muddle through HIPAA and privacy concerns on their own (and leaving themselves open to plenty of risk). This latest EEOC update defines these terms, **making it clear what an employer can and can't do** to encourage program participation, what accommodations they have to make for people with disabilities, and what kinds of programs qualify as "health programs".

When a wellness plan collects an employee's health information, most often through the completion of a Health Risk Assessment ("HRA") or a biometric screening, the final rules require employers to provide a notice to employees to explain:

- What medical information will be obtained
- How the medical information will be used
- Who will receive the medical information
- Restrictions on its disclosure
- Methods the employer uses to prevent improper disclosure of medical information.

On June 16, 2016, the EEOC released a Model Notice along with Questions and Answers to help employers comply with the ADA wellness plan notice requirement. These wellness plan rules will apply for plan years that begin on and after January 1, 2017. You can get full details about the final wellness plan rules in our **May Update**.

ADA Wellness Plan Q&As

This is a brief summary of the questions and answers the EEOC released with their rules to clarify any ambiguous areas employers may still be wondering about. Employers should review the Q&A document for more details.

1. *If wellness program participants already get a notice under the Health Insurance Portability and Accountability Act (HIPAA), do they need to get a separate ADA notice?*

If the HIPAA notice satisfies the ADA requirements and provides all the required information, a separate notice is not necessary.

2. *Who must provide the notice?*

The employer is responsible for ensuring that employees receive the notice; however, the wellness vendor may provide the notice.

3. *Does the notice have to include the exact words in the EEOC sample notice?*

No.

4. *When should employees get the notice?*

The requirement takes effect on the first day of the plan year that begins on and after January 1, 2017, for the plan the employer uses to determine wellness plan incentives. The notice must be provided prior to an employee having to provide health information and must allow sufficient time for the employee to decide whether or not to participate in the wellness program.

5. *Is an employee's signed authorization required?*

No.

6. *In what format should the notice be provided?*

It may be provided in any format that will be effective in reaching the employees who are being offered an opportunity to participate in the wellness program.

7. *What notice must employers provide for spouses participating in an employer's wellness program?*

The Genetic Information Nondiscrimination Act ("GINA") requires an employer to obtain prior, knowing, written, and voluntary authorization from the spouse before the spouse completes a health risk assessment when the employer offers health or genetic services and requests health status information of an employee's spouse.

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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