

Proposed Regulations On Employee Wellness Programs

April 16, 2015 • Legal Updates & Insights

On April 16, 2015, the United States Equal Employment Opportunity Commission (EEOC) issued new proposed regulations concerning employee wellness programs that are part of group health plans. The proposed regulations specifically describe how Title I of the Americans with Disabilities Act (ADA) applies to these employer wellness programs.

For those who are unfamiliar, employee wellness programs are often included as part of an employer's group health plan, and are intended to encourage healthier lifestyles or prevent disease. Certain employee wellness programs may offer discounts to fitness clubs or health insurance premiums if the employee agrees to engage in healthy conduct (e.g., quit smoking, start running, participate in a particular fitness program, etc.). Though generally viewed as positive initiatives, certain aspects of employee wellness programs can implicate regulations under the ADA, Health Insurance Portability and Accountability Act (HIPAA), as amended by the Affordable Care Act (ACA), and other federal and state laws.

As one example, employee wellness programs sometimes use health risk assessments and biometric screenings to determine an employee's health risk factors, such as body weight, cholesterol levels, blood glucose levels and blood pressure ranges. Some of these programs offer financial and other incentives for employees who participate in or achieve certain health outcomes. This can be problematic because the ADA generally limits the circumstances in which employers may ask employees about their health or require them to undergo medical examination. There is an exception to this rule where the questions are voluntary and part of an employee health program, but the contours of the exception are considered by some to be ambiguous.

The proposed EEOC regulations would require that an employer's health program that seeks information about employee health or medical examinations be reasonably likely to promote health or prevent disease. The proposed EEOC regulations further provide that employees may not be required to participate in a wellness program, and they may not be denied health coverage or disciplined if they refuse to participate. Moreover, employers would be required to provide employees with a notice that describes what medical information will be collected, with whom it will be shared, how it will be used, and how it will be kept confidential.

The EEOC's proposed regulations make clear that while employee wellness programs are permitted under the ADA, they may not be used to discriminate based on disability. Accordingly, under the proposed regulations, medical information collected as a part of a wellness program may be disclosed to employers only in a manner that does not reveal the employee's identity. Employers also cannot interfere with an employee's rights under the ADA, or threaten, intimidate, or coerce an employee in any manner for refusing to participate in a wellness program, or for failing to achieve certain health outcomes. Perhaps most significantly, the EEOC recommends that an employer should be obligated to provide individuals with disabilities reasonable accommodations to permit them to participate in

employee wellness programs and earn whatever types of incentives an employer may offer.

Currently, the proposed EEOC regulations have been submitted to the public for comment. On June 19, 2015, the comment period will close. A copy of the proposed regulations can be found [here](#).

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