



May 23, 2016

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EEOC Publishes Final Rules for Wellness Programs

Wellness programs will continue to be subject to the Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination rules and the Affordable Care Act (ACA) rules in addition to the EEOC rules. The EEOC and HIPAA rules continue to differ, so employers will need to be very careful to understand where the rules differ and how to structure their wellness programs to meet compliance requirements.

What is a Wellness Program?

Many employers offer wellness programs that are intended to encourage healthier lifestyles among their employees. Basic wellness programs typically use medical questionnaires, health risk assessments, or biometric screenings to determine an employee's health risk factors, and employees are informed of those risk factors and provided with resources to help employees adopt healthier behaviors. Some employers offer financial and other incentives for employees to participate and some even require participation in a wellness program in order for employees to be eligible for group health coverage (this is now prohibited under the EEOC rules as explained below.)

ADA and GINA in General

The ADA prohibits employment discrimination based on health status and generally forbids employers from inquiring about workers' health status. The ADA makes an exception for medical inquiries that are conducted as part of a voluntary wellness program.

GINA prohibits employment discrimination based on genetic information and forbids employers from asking about individuals' genetic information, including information about family members' health status or family history. GINA also provides for an exception for inquiries through voluntary wellness programs.

The EEOC, which enforces both the ADA and GINA, issued the final regulations on wellness programs “to reflect both the ADA’s goal of limiting employer access to medical information...and the ACA’s provisions promoting wellness programs,” with similar changes under GINA.

For more information regarding the Final Rule under the ADA, [click here](#) to view this article in its entirety.

If you have any questions about wellness plans, please contact [Alison M. Stemler](#) or [Carl C. Lammers](#) in Frost Brown Todd’s [Employee Benefits Law](#) group.

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