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EEOC's Proposed Rule Favors Employee Wellness Programs

Last week, the Equal Employment Opportunity Commission (EEOC) issued a proposed rule governing employee wellness programs. The new rule is largely favorable to employers, calming concerns over recent EEOC suits alleging some employee wellness programs violated the Americans with Disabilities Act (ADA).

Employee wellness programs are required to comply with federal anti-discrimination laws. Most importantly, wellness programs must comply with Title I of the ADA, which prohibits discrimination in employment based on an applicant's or employee's disability. Wellness programs must also comply with the Health Insurance Portability and Accountability Act (HIPAA), which prohibits discrimination in group health plans based on any health factor.

There was sharp disagreement between employers and regulators as to whether participation in outcome-based wellness programs was truly "voluntary" if employees were offered significant discounts on health insurance premiums for participation. As part of the Affordable Care Act (ACA), the HIPAA regulations were amended to allow employers to offer health insurance incentives to its employees who achieved certain health outcomes if the incentive program met certain requirements. The ADA regulations, on the other hand, forbid employers from making disability-related inquiries or requests for medical examinations as part of a wellness program unless an employee's disclosure was voluntary. Employers argued that the ACA clearly allowed employers to offer its employees reduced health insurance premiums for meeting certain health goals, like quitting smoking or losing weight. The EEOC, however, in litigation, took the position that such incentives were coercive.

Under the proposed rule, the EEOC largely harmonizes the approach to wellness programs under the ADA and HIPAA. Specifically, under the proposed regulations employers may offer employees as much as a 30 percent reduction in the total cost of employee-only health coverage. Employers must provide notice to its employees

describing what medical information the program seeks, who will receive the information, how it will be used, restrictions in its disclosure, and how the employer will prevent improper disclosure. Additionally, the regulations only permit employers to receive the medical information of its employees in aggregate form, except as needed to administer the health plan. Finally, consistent with the current rule, employee participation in the program must be voluntary.

The proposed rule is not final and the EEOC must review comments submitted during the comment period, which is open until June 19, 2015. A copy of the proposed rule, as well as a summary, is available [here](#).

For more information on the proposed rule or how to submit comments, please contact [Mekesha H. Montgomery](#), [Steven T. McDevitt](#) or any other member of Frost Brown Todd's [Labor and Employment](#) practice group.

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