

PUBLICATION

The EEOC's New Corporate Wellness Regulations

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With so much coverage of the DOL's new overtime regulations, the Equal Employment Opportunity Commission's (EEOC) May 16, 2016 regulation affecting wellness programs has gone mostly unnoticed. The rules describe how the American with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to wellness programs offered by employers that request health information from employees and their family members, and attempt to balance the purpose of wellness programs while protecting employees from discrimination. Employers offering wellness plans should take notice.

Generally, the ADA and GINA prohibit employers from obtaining or using information about their employees or their family members. But since some health information may be collected for the purposes of a voluntary wellness program, employers can find themselves facing unintended consequences like nonpermissive inquiries into disabilities, invasive medical examinations and increased health insurance premiums and/or reduced coverage.

Until now, there was some question as to whether a wellness program was truly voluntary if there were incentives for participation in the program. The final ADA rule provides that wellness programs that are part of a group health plan and that ask questions about employees' health or include medical examinations may offer incentives of up to 30 percent of the total cost of coverage. The final GINA rule provides that the value of the maximum incentive attributable to an employee or their spouse's participation may not exceed 30 percent of the total cost of their coverage. No incentives are allowed in exchange for disclosure of health information of an employees' children or in exchange for genetic information of an employee or their family members.

The new rules also address information sharing and privacy. Wellness plan participants must be given notice of who will have access to their health information and for what purpose it will be used. Additionally, employers are prohibited from requiring participants to agree to sell or otherwise disclose their health information for a purpose inconsistent with the mission of a wellness plan to receive participation incentives.

The regulations apply to all employers with 15 or more employees. Other notable takeaways of the rules include:

- Employees may not be required to participate in wellness programs;
- Employers may not deny group health benefits to employees who refuse to participate in the wellness program;
- Wellness programs must offer detailed notice of medical information that will be obtained (including how the information will be used); and
- The rules effectively eliminate an employer's ability to impose additional tobacco incentives as authorized by the Affordable Care Act, unless the employer eliminates biometric testing for tobacco use.

The new rules go into effect in 2017 and apply to all workplace wellness programs.

The final rules can be accessed [here](#) and [here](#). Ensure that your wellness plan complies with the requirements of both.