

EEOC Issues Proposed Wellness Plan Regulations Under the Americans with Disabilities Act

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Today, the Equal Employment Opportunity Commission (EEOC) published a notice of proposed rulemaking regarding the application of the Americans with Disabilities Act (ADA) to wellness programs. We have been eagerly awaiting guidance from the EEOC on this issue. Although the EEOC had not provided guidance for plan sponsors regarding how to design their wellness programs to comply with the ADA, the agency had begun bringing lawsuits against employers for wellness program violations. See our Benefits Blast post ["Wellness Programs Violate ADA, Claims EEOC in Lawsuits"](#) for more details.

The proposed guidance provides that a wellness program can offer rewards to employees who achieve certain health outcomes (or impose penalties for those who fail to achieve the outcomes) of up to 30% of the total cost (both employer and employee) of employee-only coverage. This is consistent with the limits under HIPAA, as modified by the Affordable Care Act. The guidance also provides that:

- The 30% limit applies to any wellness program that includes disability-related questions and/or medical examinations.
- To be considered voluntary, an employer may not require an employee to participate in the wellness program, may not deny health coverage or limit health coverage for employees who don't participate, and may not take any other adverse action against an employee who does not participate or who does not achieve the required outcomes.
- An employer must provide a notice to employees explaining what medical information will be obtained, how it will be used, who will receive it, and the restrictions on disclosure.
- An employer can receive aggregate information collected by a wellness program only if the information does not disclose and is not reasonably likely to disclose the identity of specific individuals, except as necessary to administer the plan.
- Employers must provide reasonable accommodations to allow employees with disabilities to participate in wellness programs and obtain the program's incentives.

The EEOC is seeking comments on the proposed guidance through June 19, 2015.

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Author

Erin Haldorson Weber

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Erin Haldorson Weber

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