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Wellness Programs: Legal Update

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Overview

- **Laws applicable to wellness programs**
- **Final regulations under the ADA**
- **Final regulations under GINA**

Types of Wellness Programs and Related Laws

Group Health Plan Based	Employment Based
ADA	ADA
GINA	GINA
Tax Laws	Tax Laws
State Laws	State Laws
ERISA	
HIPAA	
Affordable Care Act	

ADA Requirements

- **Employer may not make disability-related inquiries or require a medical examination**
- **Exceptions:**
 - **Bona fide benefit plan for underwriting purposes**
 - **Voluntary medical exams and medical histories as part of a wellness program**

ADA Final Regulations

To comply with final ADA rules, wellness program must:

- **Be reasonably designed to promote health or prevent disease;**
- **Be voluntary (including limits on rewards); and**
- **Provide prescribed notice to participants**

ADA Final Regulations

- **“Reasonably designed to promote health or prevent disease”**
 - **Has a reasonable chance of improving the health of, or preventing disease in, participating employees**
 - **Is not overly burdensome**
 - **Is not a subterfuge for violating the ADA or other laws prohibiting employment discrimination**
 - **Is not highly suspect in the method chosen to promote health or prevent disease**

ADA Final Regulations

■ “Voluntary”

- **May not require employees to participate (but can have permissible financial incentives)**
 - **30% limit regardless of whether participation-only or outcome-based**
- **May not deny coverage under any group health plans or particular benefits packages within a group health plan for non-participation, or limit the extent of benefits (except as specifically permitted) for employees who do not participate**
- **May not take adverse employment action or retaliate against, interfere with, coerce, intimidate, or threaten employees**
- **Must provide notice (see next slide)**

ADA Final Regulations

■ Notice requirement

- Written so that the employee is reasonably likely to understand**
- Describes the type of medical information that will be obtained and the specific purposes for which it will be used**
- Describes the restrictions on the disclosure of the employee's medical information, the individuals with whom it will be shared, and the methods that will be used to ensure that it is not improperly disclosed**
- Sample notice on EEOC website**

GINA

- **Restricts acquisition and disclosure of genetic information**
- **“Genetic information” includes medical information with respect to a family member**
 - **Family member includes spouse**

GINA Final Regulations

- **Permits financial incentives for spouse to complete HRA or biometric screening if relevant rules are satisfied**
- **Prohibits penalties to employee for spouse's manifestation of disease or disorder**
- **Prohibits incentives for information about the manifestation of disease or disorder in an employee's child**
- **Limit of 30% for spouse's participation**

Questions/Discussion

Thank you!

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