



News Alert - EEOC Issues Proposed Rule on Application of the ADA to Employer Wellness Programs

On April 20, 2015, the U.S. Equal Employment Opportunity Commission (“EEOC”) publish a proposed rule providing guidance to employers for structuring employer wellness programs to comply with the Americans with Disabilities Act (“ADA”).

The ultimate goal of the ADA is to prevent discrimination based on disability. In this proposed rule, the EEOC applies the ADA to employer sponsored wellness programs that are offered as part of an employer’s group health plan in order to ensure nondiscrimination in the workplace. The rule proposes to do this by both concurring with existing ACA limits on wellness incentives and requiring a specific notice be given to wellness program participants.

ACA Wellness Incentives Limits for Employee Coverage

The EEOC rule restates the existing ACA wellness incentive limits, stating that companies may offer incentives of up to “*30 percent of the total cost of employee-only coverage under the plan, including both employee and employer contributions towards the cost of coverage (or 50 percent to the extent that the additional percentage is attributed to tobacco prevention or reduction)*” in connection with wellness programs. These programs can include medical examinations or questions about employees' health (such as questions on a health risk assessment). The term “incentives” includes both financial and in-kind incentives, such as time-off awards, prizes, or other items of value. The EEOC has stated it will address the incentive limits for employee family members in a future rulemaking.

Specific Notice

The EEOC rule also requires that employers provide employees a notice that describes what medical information will be collected, with whom it will be shared, how it will be used, and how it will be kept confidential. Specific guidance on the required contents of this notice will be issued alongside the final version of this proposed rule.

The EEOC also promises to provide an extensive discussion of both legal requirements and best practices that ensure confidentiality of employee medical information. Although the EEOC is accepting comments regarding this proposed rule, it has not set forth an intended effective date for its provisions. Finally, as mentioned above, the EEOC is set to address incentive limits for employee family members at some point in the future. So, please stay tuned for more information on the required notice and effective date and contact your account management team if you have any questions.

Application

As many employers provide wellness programs as part of their group health plan to help curtail rising health care costs, many employers use health risk assessments and/or biometric screenings to determine certain risk factors. Currently, under the ADA, employers may ask employees about their health or require them to undergo medical examinations *if* they are voluntary or part of an employee health program and such a program is likely to promote health or prevent disease. The EEOC makes it clear that wellness programs cannot discipline or deny health coverage to those who do not participate in the wellness program.

When administering the wellness program, medical information collected as part of the wellness program may only be disclosed in aggregate form so as to not expose the identity and must be kept confidential. This is generally consistent with HIPAA. Furthermore, as was required before, the EEOC emphasizes that “reasonable accommodations” be made as part of the wellness program for purposes of ADA.

If you have any questions on this proposed rule or your current wellness program, please contact your account management team at Henderson.