



# Employers May Provide Limited Incentives to Encourage Participation in Workplace Wellness Programs Under EEOC's Final Rules

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On May 17, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) issued two final rules relating to how employer-sponsored wellness programs may comply with the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA).

Under the ADA, employers are generally restricted from asking employees disability-related questions and requiring employees to undergo medical examinations. Under GINA, employers are prohibited from requesting or obtaining genetic information about employees or their family members. However, both of these statutes provide an exception for voluntary employee health programs, which include workplace wellness programs.

Many employers offer workplace wellness programs intended to promote healthy lifestyles or to prevent disease. Many of these programs ask employees to complete health risk assessments, medical questionnaires, and biometric testing for certain risk factors, such as high blood pressure, glucose, or cholesterol. Some employers encourage employee participation in such programs by offering financial or in-kind incentives.

The EEOC's final rules clarify the extent to which employers may use such incentives to encourage employees and their spouses to participate in employer-sponsored wellness programs that involve medical questionnaires and/or examinations.

Under the ADA final rule, an employer may provide an incentive of up to **30 percent of the total cost of self-only coverage** to encourage an employee to participate in an employer-sponsored wellness program that involves or requires answering disability-related questions or completing a medical examination. An

employer must also notify its employees what medical information will be obtained, how it will be used, who will receive it, and how the information will be kept confidential.

Under the GINA final rule, the maximum incentive an employer may provide for an employee's spouse to participate in an employer-sponsored wellness program that involves or requires provision of the spouse's current or past health status as part of a health risk assessment is **30 percent of the total cost of self-only coverage**. However, an employer may not offer any incentives for the current or past health status information of employees' children or in exchange for genetic information about an employee, an employee's spouse, or an employee's children.

Under both final rules, a workplace wellness program must be reasonably designed to promote health or prevent disease. In addition, an employer may only receive information collected from a wellness program in aggregate form. An employer may not require an employee to sell, exchange, share, transfer, or disclose medical information (except as part of the wellness program) as a condition of participating, or receiving an incentive from participating, in a wellness program.

The final rules go into effect as of the first day of the first plan year that begins on or after January 1, 2017. The final rules apply to all wellness programs, whether or not the program is part of a group health plan.

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