Small Business Fact Sheet
Final Rule on Employer Wellness Programs and Title I of the Americans with Disabilities Act

On May 17, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) issued a final rule, available at https://www.federalregister.gov/articles/2016/05/17/2016-11558/regulations-under-the-americans-with-disabilities-act, to amend the regulations and interpretive guidance (also known as the appendix) implementing Title I of the Americans with Disabilities Act (ADA) as they relate to employer wellness programs. The Commission also has published a final rule under Title II of the Genetic Information Nondiscrimination Act (GINA), available at https://www.federalregister.gov/articles/2016/05/17/2016-11557/genetic-information-nondiscrimination-act, on GINA and employer wellness programs. A question-and-answer document on the ADA final rule is available at https://www.eeoc.gov/laws/regulations/qanda-ada-wellness-final-rule.cfm, and a question-and-answer document on the GINA final rule is available at https://www.eeoc.gov/laws/regulations/qanda-gina-wellness-final-rule.cfm.

Overview

Title I of the ADA prohibits employers from discriminating against individuals on the basis of a disability. It also generally restricts employers from obtaining medical information from applicants and employees but allows employers to make inquiries about employees' health or do medical examinations that are part of a voluntary employee health program.

The ADA requires employers to make all wellness programs available to all employees, to provide reasonable accommodations that allow employees with disabilities to participate, and to keep all medical information confidential.

Why This Rule Is Needed

Before this final rule was issued, ADA regulations stated that employers may make inquiries and conduct medical examinations that are part of a voluntary health program, but did not define the term "voluntary," explain what constitutes a "health program," or say whether employers could offer incentives to encourage employees to participate in such programs. However, provisions of the Health Insurance Portability and Accountability Act (HIPAA), as amended by the Patient Protection and Affordable Care Act (Affordable Care Act), allow financial and other incentives to encourage employees to participate in wellness programs.

What This Rule Does

This rule allows employers to provide limited incentives as part of wellness programs that make disability-related inquiries or require medical examinations. Incentives may be financial or in-kind (e.g., time-off awards, prizes, and other items of value).

This rule does not apply to wellness programs that do not obtain medical information but simply require employees to engage in a certain activity (such as attending a nutrition or weight loss class or walking a certain amount every week) in order to earn an incentive. However, employers have to provide reasonable accommodations (such as a sign language interpreter for someone who is deaf to attend a nutrition or smoking cessation class, materials in an accessible format like Braille or large print for someone with a vision impairment, or an alternative to a walking program for someone who uses a wheelchair) to allow employees with disabilities to earn whatever incentive is offered.

Voluntary

An employee's participation in a wellness program that includes disability-related inquiries or medical examination must be voluntary. In order for participation to be considered voluntary, an employer:

- may not require participation;
- may not deny access to health insurance or benefits to an employee who does not participate;
- may not retaliate against, interfere with, coerce, intimidate, or threaten any employee who does not participate or fails to achieve certain health outcomes;
- must provide a notice that explains the medical information that will be obtained, how it will be used, who will receive it, and the restrictions on disclosure; and
- must comply with the incentive limits described in the rule.

Reasonably Designed

Any employee health program, including disability-related inquiries or medical examinations that are part of such a program, must be **reasonably designed to promote health or prevent disease**. A wellness program meets this standard if it:

- has a **reasonable chance** of **improving the health** of, or **preventing disease** in, participating individuals; and

- is not **overly burdensome**, a **subterfuge for violating** the ADA or other laws prohibiting employment discrimination, or **highly suspect** in the method chosen to promote health or prevent disease.

A wellness program is not reasonably designed to promote health or prevent disease if the program:

- exists **merely to shift costs** to employees based on their health;
- is used **only to predict an employer's future health costs**;
- imposes **unreasonably intrusive** procedures, an **overly burdensome** amount of time for participation, or **significant costs** related to medical exams on employees; or
- collects health information but does not use it to provide follow-up information or advice to individual participants or to design a program that addresses at least some conditions identified in the responses (e.g., a program to help manage diabetes if aggregate information shows that a significant number of employees in the employer's workforce have diabetes).

Amount of Incentives

Incentives to an employee who answers disability-related questions or undergoes medical examinations as part of a wellness program in order to earn a reward or avoid a penalty, are limited to the following:

- **Where the employer requires the employee to be enrolled in a particular health plan** in order to participate in the wellness program, the incentive to the employee may not exceed **30 percent of the total cost of the self-only version of the plan in which the employee is enrolled**.
- **Where the employer offers more than one self-only health plan**, and **does not require**the employee to be enrolled in a particular health plan in order to participate in the wellness program, the incentive may not exceed **30 percent of the lowest cost major medical self-only plan the employer offers**.
- **Where the employer does not offer a health plan,** and offers a wellness program that is open to employees, the incentive may not exceed **30 percent of the total cost to a 40-year-old non-smoker purchasing self-only coverage under the second lowest cost Silver Plan available on the state or federal Exchange in the location that the employer identifies as its principal place of business.** For information about the cost of insurance on the exchanges, see www.HealthCare.gov.

Confidentiality

ADA rules already in effect prior to this rule prohibit the disclosure of an employee's medical information. The final rule does not change any of the exceptions to confidentiality in EEOC's existing ADA regulations, but adds two new requirements. An employer:

- may only receive information collected by a wellness program in aggregate form that does not disclose, and is not reasonably likely to disclose, the identity of specific individuals except as necessary to administer the plan; and

- may not require an employee to agree to the sale, exchange, transfer, or other disclosure of medical information or to waive confidentiality protections under the ADA in exchange for an incentive or as a condition for participating in a wellness program, except to the extent permitted by the ADA to carry out specific activities related to the wellness program.

Applicability Date

The provisions of this rule requiring a notice and establishing incentive limits apply only prospectively to wellness programs as of the first day of the first plan year that begins on or after January 1, 2017, for the health plan used to determine the level of incentives permitted under the rule. For example, if the healthplan used to calculate the permissible incentive limit begins on January 1, 2017, that is the date the provisions of this rule governing incentives and the notice requirements apply to the wellness program. If the plan used to calculate the incentive limit begins on March 1, 2017, the rule applies as of that date.

Other parts of this rule that are clarifications of existing obligations, such as the provision that says employers cannot retaliate against someone for refusing to participate in a wellness program and the provisions requiring confidentiality, already apply to wellness programs.

The applicability date is different from the rule's effective date, which is just the date on which the rule will be made part of the Code of Federal Regulations, the official publication for all federal regulations.