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## Wellness Programs and Discrimination

The U.S. Equal Employment Opportunity Commission has not developed a firm definition of “voluntary” with respect to company wellness programs leaving employers and human resources representatives in limbo. Until the EEOC makes a decision and provides a clear definition, employers need to be aware of their exposure to violating anti-discrimination laws when offering wellness programs to their employees.

Even though they are considered voluntary, some wellness programs offer incentives that could make them appear discriminatory under several federal statutes including the Americans with Disabilities Act and Health Insurance Portability and Accountability Act to name just a couple.

Wellness programs are popular in many companies as a standard business practice because of the discount incentives employers can offer toward employee health insurance premiums. These incentives are used to promote voluntary participation in the programs.

However, this is where the EEOC is unclear on the definition of “voluntary”. Sometimes the EEOC has questioned whether discount incentives penalize non-participating employees and at other times said that voluntary programs are acceptable. Some experts believe that the popularity of wellness programs by employers makes it difficult for the EEOC to take a firm position on the issue so as not to appear anti-wellness.

So how can employers offer a wellness program and not be discriminatory?

- Place your wellness program under your benefit program.

- Be clear that the wellness program is voluntary.
- Comply with all the other federal regulations.
- Work with benefit professionals to develop programs aimed at reaching your wellness goals.
- Make sure your wellness program is available to all employees.
- Find reasonable alternatives for those who are medically unable to work toward your wellness goal.
- Do not require medical exams or ask disability-related questions for participation in the wellness program.
- Avoid offering large incentives that might make employees feel pressured to participate.
- Get a handle on the demographics of your employee base so you can get a sense of their interest in a wellness program and the challenges it may present.

### What This Means to Counties

In general, don't be afraid to implement a wellness program. Employers need to exercise good judgment in developing a program that is inclusive of all employees.

This is the first in the series of understanding wellness programs and their application. Look for future updates that give specifics as they relate to the Patient Protection Affordable Care Act (PPACA).

For further information, contact CTSI at 303-861-0507.