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## EEOC Issues Final Rules on Employer Wellness Programs

The U.S. Equal Employment Opportunity Commission (EEOC) today issued final rules that describe how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to wellness programs offered by employers requesting health information from employees and their spouses. The two rules provide guidance to both employers and employees about how workplace wellness programs can comply with the ADA and GINA consistent with provisions governing wellness programs in the Health Insurance Portability and Accountability Act, as amended by the Affordable Care Act (ACA).

The rules permit wellness programs to operate consistent with their stated purpose of improving employee health, while including protections for employees against discrimination.

Many employers offer workplace wellness programs intended to encourage healthier lifestyles or to prevent disease. These programs sometimes use medical questionnaires or health risk assessments and biometric screenings to determine an employee's health risk factors, such as body weight and cholesterol, blood glucose, and blood pressure levels. Some of these programs offer financial and other incentives for employees to participate or to achieve certain health outcomes.

The ADA and GINA generally prohibit employers from obtaining and using information about employees' own health conditions or about the health

conditions of their family members, including spouses. Both laws, however, allow employers to ask health-related questions and conduct medical examinations, such as biometric screenings to determine risk factors, if the employer is providing health or genetic services as part of a voluntary wellness program. Last year, EEOC issued proposed rules that addressed whether offering an incentive for employees or their family members to provide health information as part of a wellness program would render the program involuntary.

The final ADA rule provides that wellness programs that are part of a group health plan and that ask questions about employees' health or include medical examinations may offer incentives of up to 30 percent of the total cost of self-only coverage. The final GINA rule provides that the value of the maximum incentive attributable to a spouse's participation may not exceed 30 percent of the total cost of self-only coverage, the same incentive allowed for the employee. No incentives are allowed in exchange for the current or past health status information of employees' children or in exchange for specified genetic information (such as family medical history or the results of genetic tests) of an employee, an employee's spouse, and an employee's children.



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The final rules, which will go into effect in 2017, apply to all workplace wellness programs, including those in which employees or their family members may participate without also enrolling in a particular health plan.

## **Program Design**

Both rules also seek to ensure that wellness programs actually promote good health and are not just used to collect or sell sensitive medical information about employees and family members or to impermissibly shift health insurance costs to them. The ADA and GINA rules require wellness programs to be reasonably designed to promote health and prevent disease.

## **Protecting Confidentiality**

The two rules also make clear that the ADA and GINA provide important protections for safeguarding health information. The ADA and GINA rules state that information from wellness programs may be disclosed to employers only in aggregate terms.

The ADA rule requires that employers give participating employees a notice that tells them what information will be collected as part of the wellness program, with whom it will be shared and for what purpose, the limits on disclosure and the way information will be kept confidential. GINA includes statutory notice and consent provisions for health and genetic services provided to employees and their family members.

Both rules prohibit employers from requiring employees or their family members to agree to the sale, exchange, transfer, or other disclosure of their health information to participate in a wellness program or to receive an incentive.

The interpretive guidance published along with the final ADA rule and the preamble to the GINA final rule identify some best practices for ensuring confidentiality, such as adopting and communicating clear policies, training employees who handle confidential information, encrypting health information, and providing prompt notification of employees and their family members if breaches occur.

## **What This Means for Counties**

The EEOC final rules for employer wellness programs have been published and will go into effect in 2017.

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

U.S. Equal Employment Opportunity Commission. (5/16/2016). *EEOC Issues Final Rules on Employer Wellness Programs* [Press release]. Retrieved from <https://www.eeoc.gov/eeoc/newsroom/release/5-16-16.cfm>