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HR

As the Equal Employment Opportunity Commission further evaluates employers' wellness programs, what can employers do to make sure they do not violate the ADA and what incentives will employers be permitted to provide as part of these programs?

Prompted by a desire to contain healthcare costs, corporate wellness programs have gained popularity by using financial or other incentives to encourage employees to participate in programs designed to promote healthy lifestyles and prevent disease.

Typically, such programs fall into two categories. "Participation" programs reward employees for engaging in activities that are believed to offer long-term health benefits, such as joining a gym or taking a healthcare survey. "Outcome-based" programs offer incentives to employees who achieve a specific health factor goal, such as remaining tobacco-free or maintaining a specific cholesterol level.

The EEOC's expressed concern with wellness programs is related to an employee's willingness to submit or discuss personal medical information—disclosure of which might otherwise violate the ADA or the Genetic Information Non-Discrimination Act.

According to the EEOC, any medical inquiry contemplated by a wellness program is lawful only if

participation in the program is truly "voluntary."

What is voluntary? The EEOC considers a program to be voluntary if an employer does not require employees to participate, does not deny coverage or limit benefits under any health plan based on an employee's non-participation and does not take any adverse employment action or retaliate against an employee for failing to participate.

The EEOC's new proposed regulations require employers to provide notice to employees regarding safeguards put in place for the medical information obtained, who will receive it, how it will be used, restrictions on its disclosure, and how the medical information will be protected.

While an employer may offer incentives to participate in a wellness program, the EEOC has taken the position that the total allowable incentive may not exceed 30 percent of the total cost of employee-only coverage.

Because of this, employers should carefully review their wellness programs to ensure compliance with the EEOC's latest directives. ♦

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