

Wellness Requirements

Does the wellness program provide an incentive for participation (or penalty for failure to participate)?

No

HIPAA and EEOC wellness rules do not apply

Yes

1

Is the wellness program tied to a group health plan?

- Does the incentive affect the group health plan (e.g., reduction in premium or cost-sharing, HRA/FSA contribution)?
- Is the wellness program itself a group health plan (e.g., biometric screening, vaccine clinic)?

Yes

HIPAA wellness rules apply

See HIPAA wellness rules on pg. 2

No

HIPAA wellness rules do not apply

2

Does the wellness program require medical examinations, disability-related questions or sharing of genetic information?

- Is a biometric screening or physical exam required?
- Is completion of a health risk assessment required?
- Are employees required to share genetic information, or are spouses required to share information about the manifestation of a disease or disorder?

Yes

EEOC wellness rules apply

See EEOC wellness rules on pg. 3

No

EEOC wellness rules do not apply

HIPAA Wellness Rules

Are the wellness program requirements merely participatory (no activity-based or outcome-based requirements)?

Yes

For participatory programs, the only requirement is that it be made available to all similarly situated individuals.

Are any of the wellness program requirements health contingent?

- Is the incentive tied to completion of an activity (e.g., walking, running)?
- Is the incentive tied to achieving certain health results (e.g., bmi, cholesterol, not diabetic)?
- Might health status prevent participation (e.g. hemophiliac unable to obtain a vaccine)?

Yes

For health-contingent programs, all of the following requirements must be met:

- Participants must be given an annual opportunity to qualify for the reward;
- The maximum reward (or penalty) cannot exceed 30% of the total cost of coverage, or 50% for tobacco-related programs;
- The program must be reasonably designed to promote health or prevent disease, and must not be overly burdensome or a subterfuge for violating discrimination laws;
- The reward must be available to all similarly situated individuals and to individuals who qualify by satisfying a reasonable alternative standard; and
- The program must disclose the availability of a reasonable alternative standard in all plan materials describing the terms of the wellness program.

EEOC Wellness Rules

Do the wellness program requirements involve medical examinations or disability-related questions (e.g. biometric screening, annual physical, health risk assessment)?

Yes

If yes, whether the incentive is tied to a group health plan or not, the following requirements must be met to avoid violating the Americans with Disabilities Act (ADA):

- Those choosing not to participate cannot be denied group health plan coverage or be subjected to adverse employment action, coercion, or intimidation;
- Must be reasonably designed to promote health or prevent disease, and must not be overly burdensome or a subterfuge for violating discrimination laws;
- Participants must be provided with a notice that includes a description of the medical information collected, who will have access to it, and how it will be used and kept confidential;
- Information collected may generally be provided only in aggregate form unlikely to disclose the identity of specific individuals except as necessary to administer the plan. Information must be collected on separate forms, maintained in separate files, and treated as a confidential medical record;
- Reasonable accommodation is required if a disability or medical condition prevents individuals from participating or earning an incentive; and
- Participants may not be required to agree to the sale, exchange, sharing, transfer, or other disclosure of medical information (except as permitted to carry out activities related to the wellness program), or to waive confidentiality protections in place under the ADA as a condition for participating or receiving an incentive.

Not clear what level of incentive is permitted

Does the wellness program request any genetic information about the employee (including information about the manifestation of a disease or disorder in a family member)?

Yes

If genetic information is requested in a health risk assessment, the following requirements must be met to avoid violating the Genetic Information Nondiscrimination Act (GINA):

- Provide no incentive in connection with an employee's completion of an assessment that collects genetic information, or make it clear that choosing not to complete the portion requesting genetic information will not impact the availability of the incentive;
- Provide no incentive for children providing information about the manifestation of a disease or disorder (which is considered the genetic information of the employee);
- For spouses choosing to provide information about the manifestation of a disease or disorder (which is considered the genetic information of the employee), in addition to the items outlined for compliance with the ADA, the spouse must sign off on a confidentiality notice before participating (**not clear what level of incentive is permitted**); and
- Spouses cannot be denied an incentive for failure to satisfy a particular outcome (e.g., BMI, cholesterol) or the manifestation of a disease or disorder (e.g., diabetes, hypertension).