



EEOC proposes rule expanding wellness incentives to spouses

By John Litchfield

Employee wellness programs are frequently a source of ulcer-causing angst for employers, but the Equal Employment Opportunity Commission (EEOC) is making moves to treat some of the underlying issues.

Late last week, the EEOC issued a proposed rule to amend Title II of the Genetic Information Non-Discrimination Act of 2008 (GINA) that would “allow employers who offer wellness programs as part of group health plans to provide limited financial and other inducements ... in exchange for an employee’s spouse providing information about his or her current or past health status.”

On its face this may appear to be a minor issue, but in reality, this change helps employers avoid inadvertently violating GINA’s broad employee protections.

GINA seeks to protect workers and job applicants from employment discrimination and bias because of their “genetic information,” which includes information about family medical history and the medical conditions of employees’ spouses. Employers cannot use genetic information when making employment decisions and are prohibited from otherwise collecting, requesting, buying or using genetic information unless they can qualify for one of the law’s narrow exceptions.

One of these exceptions is employee wellness programs. Employee wellness programs are a popular way for employers to incentivize employees to lead healthier, happier lives, and ultimately aim to reduce the costs of group health coverage. Many such programs offer incentives to employees to participate, which is generally permitted under this GINA exception even where the employee provides certain genetic information as part of a wellness screening. Because many employees choose to cover their spouses under an employer-sponsored group health plan, some employers (at the behest of their insurance carriers) seek to extend their wellness programs to employee spouses.

Under the proposed rule, the EEOC will permit employers to offer incentives (in the form of rewards or penalties) to an employee whose spouse, covered by the plan, voluntarily receives health or genetic services provided by the employer as part of the overall employee wellness program. The rule allows employers to be somewhat creative, too, in its incentives, including

providing paid time off, prizes, gift cards, and, of course, financial incentives. The only limit is that any incentive cannot exceed 30 percent of the total cost of self-only coverage.

All of these proposed changes appear to be consistent with the EEOC's April 2015 proposed regulations addressing how the Americans with Disabilities Act (ADA) applies to wellness programs, which we reported on this past spring. While employee wellness programs remain popular, and help employers keep their health insurance costs down, paying keen attention to this changing area of the law will keep employers out of the weeds and help create a healthier workforce.

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