

EXPERT UPDATE



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Wellness Initiative Modifications for GINA and ADA Compliance

By Shari Herrle, Director of Compliance

The Equal Employment Opportunity Commission (EEOC) issued final rules that describe how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to employer-sponsored wellness programs. Wellness programs that ask employees and their spouse questions about their health status and/or include medical examinations, including biometric screenings, must disclose certain information and limit incentives to comply with the final rules which apply only prospectively as of the first day of the first plan year that begins on or after January 1, 2017. Let's take a look at what the new ADA and GINA requirements mean for your wellness program.

Step #1: Start by answering a few questions.



Does your wellness initiative require employees, or employees and their spouse, to complete a health risk assessment (HRA)? Or perhaps the program requires they participate in biometric screenings? If yes, your wellness program is obtaining medical information so it must comply with new incentive rules.

Incentive limit*:

Single-only: 30% of the total cost of self-only coverage

Other tiers: 30% of total cost for self-only coverage x 2 (spouse participating in wellness)


Employers may offer children the opportunity to participate in wellness programs; however, they may not offer inducements in exchange for current or past health information about children. Inducements for genetic information about spouses and children (such as a spouse's or child's family medical history) are also prohibited.


Please note that the information contained in this document is designed to provide authoritative and accurate information, in regard to the subject matter covered. However, it is not provided as legal or tax advice and no representation is made as to the sufficiency for your specific company's needs. This document should be reviewed by your legal counsel or tax consultant before use.


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-  Does your non-tobacco initiative require an attestation form *only*? If no medical test is conducted and an attestation form is all that's needed, you may incur up to 50% of the total cost of self-only coverage for the non-tobacco initiative. If in addition to the attestation, you require completion of an HRA, and/or you require biometric screenings, you must comply with the 30% incentive limit.

-  Do you simply require that individuals engage in a wellness activity, such as walking a certain amount each week, or attending lunch-and-learns? If yes, you are not obligated to comply with the new incentive rules, but the ADA *does require* that the program provide a reasonable alternative standard to allow individuals with a disability to earn the incentive.

-  Is your wellness plan “voluntary” as required? Voluntary wellness programs are not permitted to require participation, they may not deny access to health insurance or benefits to an employee who does not participate, and they may not retaliate against, or interfere with, coerce, intimidate or threaten any employee who does not participate or who fails to achieve certain outcomes. As a result of this specific voluntary requirement, employers are not permitted to limit non-participants to a particular health plan or health benefits.

* Certain rules apply when multiple health plans are offered or no health plan is offered at all.

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Step #2: Make certain your program is reasonably designed to promote health or prevent disease.

To satisfy this ADA standard, the program:

- Must have a reasonable chance of improving the health of, or preventing disease in, participating employees
- Must not be overly burdensome
- Must not be a subterfuge for violating the ADA or other laws prohibiting employment discrimination
- Must not be highly suspect in the method chosen to promote health or prevent disease
- Must provide results, follow-up information, or advice designed to improve employee health, unless the collected information is used to design a program that addresses at least some of the conditions identified
- Must not exist mainly to shift costs to employees based on their health or to give employers information to estimate future health care costs

Step #3: Prepare notice to participants.

Once you have determined your wellness program is collecting medical information in the form of an HRA, biometric screenings or other medical examinations, you must make certain the plan is disclosing the information for administration of the program in aggregate form *only* and participants are notified of what information is collected and how it will be used.



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. The EEOC has provided a [sample notice](#) to help employers comply with this ADA requirement.

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GINA includes statutory notice and consent provisions for health and genetic services provided to employees and their family members.

Please note that employee wellness programs must be carefully designed to comply with the ADA, GINA and other federal laws, including HIPAA's non-discrimination requirements, as amended by the Affordable Care Act (ACA). The information we have provided in this document is intended to summarize the new GINA and ADA incentive, voluntary plan and notice obligations only.

EEOC resources:

[Final Rules](#)

[Q&As](#)

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