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Labor and Employment Update

EEOC Issues Final Rules on ADA and GINA Compliant Health Information Requests for Wellness Programs

Many employers offer their employees the opportunity to participate in wellness programs that aim at encouraging healthier lifestyles and preventing disease. Participation often requires them to provide medical information about themselves or their spouses in the form of questionnaires, risk assessments and biometric screenings. Employers often offer financial and other incentives to participate or to achieve certain health outcomes.

Although the Health Insurance Portability and Accountability Act (HIPAA), as amended by the Affordable Care Act, supports the creation of wellness programs, its objectives seem to clash with those of the Americans with Disabilities Act (ADA) and the Genetic Information Non-Discrimination Act (GINA). These prohibit employers from obtaining and using information about their employees' health conditions or those of their relatives or spouses. ADA and GINA, however, allow employers to make health-related inquiries and conduct medical examinations as part of a voluntary wellness program. On May 16, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) issued final rules to harmonize these seemingly at-odd provisions.

Both the ADA and GINA rules seek to ensure that wellness programs promote good health and are not used as a subterfuge to collect medical information about employees or their relatives or to impermissibly shift health insurance costs to them.

The rules require health information from wellness programs be disclosed to employers only in aggregate terms.

The ADA rule requires the employer to disclose to employees what information will be collected, with whom it will be shared, for what purpose, and how it will be kept confidential. GINA includes statutory notice and consent provisions. Participation in a wellness program cannot be conditioned upon an agreement to disclose health information outside the program.

Under the final rules, wellness programs may offer incentives of up to 30 percent of the total cost of self-only or spouse coverage. No incentives are allowed in exchange for health information about the employees' children or in exchange for family medical history or the results of genetic tests.

The final rules go into effect in 2017. Our attorneys at Reichard & Escalera are available to assist you in understanding and implementing these developments.



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You can also obtain more information at
<https://www.eeoc.gov/eeoc/newsroom/release/5-16-16.cfm>

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