



HIPAA, ADA Govern Corporate Wellness Programs

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Wellness programs have become the rage as employers and policy-makers search for ways to curb relentless medical inflation. But even as new laws give employers flexibility to design wellness programs, traps remain. For employers implementing a wellness program, or for those who have one but haven't considered the legal ramifications, here are some concerns:

The Health Insurance Portability and Accountability Act (HIPAA) makes it illegal for group health plans to discriminate against individuals on the basis of health condition. This means employer plans cannot charge higher premiums, co-pays or deductibles to those with medical conditions, even though these individuals incur significantly more medical expenses. HIPAA has an exception, however, for wellness programs that meet certain requirements.

Employers must also consider the Americans with Disabilities Act (ADA), which bars employment discrimination against individuals who are disabled. Employers must ensure that the disabled have equal physical access to program facilities (a gym, for example, or if classroom attendance is required, the class must be designed for both disabled and non-disabled employees).

A few states have laws making it illegal for employers to discriminate against employees using tobacco products. A wellness program that penalizes tobacco users could be found to violate these laws.

Many employers have cafeteria plans allowing employees to pay health insurance premiums with pre-tax dollars. If a wellness program contains rewards or penalties that vary an employee's premiums during the year, employers must be sure that their cafeteria plans allow mid-year changes in health insurance premiums. Failure to do so can make premium contributions taxable.

A number of questions remain about how the Affordable Care Act will dovetail with wellness plans. No one knows how wellness penalties will be applied to determine if an employee's coverage is "affordable," or if an employee is eligible for tax credits.

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