



# **Biggest Loser Contests at Work? Only If They Pass Muster With the EEOC**

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We are again running a *Biggest Loser* Contest among our 31 offices and will award prizes, beginning at \$1,000, to individuals who lose the most weight.

I do not watch reality shows and am generally cynical about such programs. However, I am happily eating my own words. Employees are having fun with the contest and the competition has generated a lot of camaraderie and playful competition.

When I visit one office, someone will only half-jokingly ask me to leave donuts on the desk of one of their “weight loss foes” in the next office I visit. Folks have regaled me with their elaborate preparation and routine for winning the contest. Their approach reminded me of my pre-race and pre-fight preparation of a few years ago.

## **The struggle for workplace wellness activities**

Workplaces struggle to develop effective wellness activities. Companies with corporate campuses and largely white collar workforces can provide gyms, exercise classes, and numerous other wellness opportunities.

However, how does an employer develop a program that will interest the construction craftsmen working 10 hours a day on a project or the truck driver who is away from home for days at a time?

So I have become an eager convert to supporting the *Biggest Loser* efforts. My wife has also won me over to wearing a “fit bit,” which tracks my steps and mileage.

I would run trails on Saturday and Sunday even without the fit bit, but I may go a little further or take a second run so that I can log my additional steps or miles. I constantly travel, and I look for ways to add to my daily “steps.”

I check my baggage so that I can walk unencumbered from Concourse A to Concourse E. I find myself looking for opportunities to park my car and to walk to my destination.

## **What about the EEOC?**

We have not yet seen the EEOC attack a *Biggest Loser* Program, alleging that such programs

unfairly discriminate against individuals with ADA-disability conditions, but given the EEOC's hostility to wellness programs, such attacks may occur.

Apparently, the Equal Employment Opportunity Commission does not care that President Obama supports wellness initiatives and that both HIPAA and the Affordable Care Act (ACA) expressly endorse wellness efforts. As one of my partners, Myra Creighton, explained, most wellness programs involve biometrics, health questionnaires, and a resulting reduction in premiums if the individual participates in certain activities.

The benefits are undeniable. An individual may learn that they have a disease, which if treated early, may save their life. There is no reason why an employee's confidentiality cannot be protected under the ADA, ACA and HIPAA.

But still, the EEOC dislikes wellness programs.

### **EEOC fails to define “voluntary”**

The EEOC held hearings and meetings on wellness programs but failed to provide the helpful guidance, especially a definition of when participation is “voluntary.” As Myra explained, medical exams are only allowed under the ADA if they are job-related and consistent with business necessity ... or if they are part of a “voluntary” wellness program.

The EEOC has filed several recent actions challenging the “voluntary” nature of programs. The EEOC's May 13, 2013 Press Release unhelpfully raised yet other suspicions.

I apologize for writing this post immediately before the holidays. To avoid workplace violence, you may want to start any new efforts in January, 2015.

This article appeared on November 28, 2014 on *TLNT.com* and originally appeared on Fisher Phillips *Workplace Safety and Health Law Blog*.

### ***Related People***





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