



Everybody Agrees That We Need Better Wellness Programs? Correct?

Insights

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My answer would be that *"I'm not sure."* An amazing number of employers agree that absent improved wellness initiatives, a graying less healthy workforce will break the corporate bank, so to speak. Seemingly, we should be able to agree on a goal of improved employer wellness programs and incentives.

Of course, life is never that simple. Many employers continue to devote little cash or effort to wellness programs, and frankly, it is a challenge to develop effective wellness initiatives for traditional blue-collar settings.

Nevertheless, we have to make the effort. Read today's article in *ENR Risk Review*, "[Will the Aging Workforce Suffer More Injuries?](#)" or articles on challenges posed by obesity, regardless of age.

On the plus side, a wide range of people, including some in Congress, want to create financial incentives directed at both employers and employees. We recently saw this quotation yesterday:

Tom Harkin (D-Iowa), calls for tax credits for businesses that offer workplace wellness programs and tax deductions for the cost of employees' gym memberships.

And yet, we have seen other groups challenge and want to make it more difficult for employers to provide monetary incentives for wellness efforts because they view such actions as potentially a violation of the ADA, or because it simply offends their view that *"everyone"* should get the same savings,... which kind of defeats the intent of encouraging healthier lifestyle decisions.

Consider the recently released EEOC Interpretation Letter below, which deals with Wellness Plans, Incentives and the ADA and GINA (warning, it is bueracrat-speak at its worst). we will discuss it based on the copy published by BNA after obtaining it via a FOIA request (another reason to use BNA). BNA concludes that,

"Employers might have to provide reasonable accommodations to employees who are unable because of a disability to comply with health plan wellness provisions that include incentives for certain conduct..."

The plan offered a waiver of annual deductible as a reward, for participation, but the EEOC was uncertain whether offering this incentive for a healthier lifestyle was so valuable that its offer rendered the plan no longer *“voluntary.”*

The EEOC stated, that it *“has not taken a position on whether and to what extent a reward amounts to a requirement to participate, or whether withholding of the reward from non-participants constitutes a penalty, thus rendering the program involuntary,”*

As to accommodation obligations, the EEOC observed,

“if a wellness program is voluntary and an employer requires participants to meet certain health outcomes or to engage in certain activities in order to remain in the program or to earn rewards, it must provide reasonable accommodations, absent undue hardship, to those individuals who are unable to meet the outcomes or engage in specific activities due to disability.”

The EEOC stated further,

“You specifically mention requiring participants to have a ‘Medication Possession Ratio > 80%’ which identifies the extent to which an individual is taking his or her requirement medication,”

and an employee is unable to meet this requirement because of a disability, EEOC than helpfully pointed out that *“the employer would need to provide a reasonable accommodation to allow the individual to participate in the plan and to earn whatever reward is available.”*

The BNA article correctly pointed out that,

in addition, a participant in the program could be lawfully removed from the plan for failure to comply with its requirements if participation in the plan is voluntary and persons whose disabilities cause them to be unable to meet the requirements are reasonably accommodated, as long as the participant “remained eligible to participate in the employer’s standard benefit plan.”

This recent Letter follows a more general 2011 EEOC Letter. Remember that these letters are for guidance and do not (yet) pronounce official EEOC positions.

The 11th Circuit Court of Appeals held in *Seff v. Broward County* that the employer's wellness plan fit within the ADA's "Safe Harbor" provisions for insurance plans. Any EEOC pronouncements should be considered along with this helpful decision.

Now, back to the real world... read the article in EHS Magazine, [The Health Incentive: Employers Encourage Workers to Take Action on Health](#), which discusses a recent [Aon/Hewitt Survey](#), noting:

Aon Hewitt, a human-resource company, surveyed nearly 800 large and mid-size U.S. employers representing more than 7 million employees and found that 83 percent offer workers incentives for

participating in health-related programs – 79 percent in the form of a reward, 5 percent in the form of consequences and 16 percent using a mix of both rewards and consequences. Employee health actions may include taking a health risk questionnaire (HRQ) or participating in biometric screenings.

Survey highlights include:

- *56 percent of employers require employees to actively participate in health programs, comply with medications or participate in activities like health coaching.*
- *24 percent offer incentives for progress toward or attainment of acceptable ranges for biometric measures such as blood pressure, body mass index, blood sugar and cholesterol. More than two-thirds say they are considering this approach in the next 3-5 years.*
- *64 percent of employers offer monetary incentives of between \$50 and \$500*
- *18 percent offer monetary incentives of more than \$500*

We also recommend the aptly titled article, [Money Talks When It Comes To Loosing Weight](#), which reviews a recent Mayo Clinic study.

BNA also recently provided an excellent article on the Aon Hewitt Study, stating,

Reduced insurance premiums and cash or gift cards were the most common form of rewards used in respondents' wellness programs, while penalties are exacted through increased premiums, Aon Hewitt spokeswoman Maurissa Kanter.

We hope that these various articles and excerpts assist you in continuing your noble quest to lawfully assist employees in developing a healthier lifestyle for them and for you.

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