

EEOC Issues ADA And GINA Rules Applicable To Employer Wellness Programs

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On May 17, 2016, the U.S. Equal Opportunity Commission (EEOC) issued an ADA Final Rule amending applicable regulations and interpretive guidance implementing Title I of the Americans with Disabilities Act (ADA), and a GINA Final Rule, under Title II of the Genetic Information Nondiscrimination Act (GINA), clarifying how the ADA and GINA Rules apply to employer wellness programs. In addition, the EEOC issued a Q & A document for each new rule, ADA Rule Q & A and GINA Rule Q & A, addressing key questions about each rule's applicability and implementation.

Title I of the ADA prohibits disability-based discrimination against individuals by an employer and restricts employer access to medical information. However, it allows employers to inquire about employee health or do medical examinations as part of a *voluntary* employee health program. Such health programs must be available to all employees, including reasonable accommodations when needed, and all medical information must be kept confidential.

The new ADA Rule allows employers to provide limited wellness incentives (financial or in-kind) as part of a program that makes disability-related inquiries or requires medical examinations. If the employer wellness program is open only to employees who are enrolled in a particular plan, the maximum allowable incentive is 30% of total cost for self-only coverage of the plan in which the employee is enrolled. Although the rule does not generally apply to wellness programs in which medical information is not obtained (such as those that require participation in an activity, such as walking a certain amount each week), employers must provide reasonable accommodations to allow employees with disabilities to participate in activity-based programs.

Likewise, an exception exists to GINA's general prohibition against acquiring genetic information in the context of an employer offering voluntary health or genetic services to employees or their family members. The new rule allows an employer to offer a limited incentive for an employee's spouse to provide information about the spouse's current or past health status as part of an employer voluntary wellness program. Inducements permitted by the GINA Rule are limited to 30% of the total cost of self-only coverage under the group health plan in which the employee and family members are enrolled. As with the new ADA rule, the GINA Rule does not apply to inducements resulting from a wellness program that simply involves participation in certain activities not requiring health status information.

With respect to the ADA Rule, provisions concerning notice to employees as to what medical information will be obtained, how it will be used, and applicable limits on incentives apply prospectively on the first day of the first plan year beginning on or after January 1, 2017, for the health plan used to determine the level of permitted incentives. The EEOC noted that the remaining rule provisions simply clarify existing obligations and apply both before and after rule publication.

With respect to the GINA Rule, much like the ADA Rule, provisions related to employer sponsored wellness program inducements apply only prospectively as of the first day of the plan year that begins on or after January 1, 2017, for the health plan used to determine the level of permitted inducements.

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