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EEOC Proposed Wellness Regulations

The EEOC has released a proposed rule discussing the requirements for a wellness program to be "voluntary" under the Americans with Disabilities Act (ADA). Although these requirements impose additional disclosure requirements than are required for nondiscriminatory wellness programs under HIPAA, having guidance is welcome news in light of the recent cases challenging wellness programs as involuntary under the ADA. Briefly, the ADA prohibits discrimination by employers against individuals on the basis of disability with respect to compensation and other terms of employment, including fringe benefits. The ADA also prohibits disability-related inquiries or requiring a medical exam, but an exception is provided when these are "voluntary" and part of an employee health program.

The proposed rules provide much-needed clarification that incentives (rewards or penalties) of up to 30% of the total cost of employee-only coverage will not render a health program "involuntary" under the ADA. As one would expect, the proposed rule makes clear that conditioning participation in the health plan on participating in the wellness program would make the program involuntary. The proposed rules do add additional disclosure requirements for wellness programs that are part of a group health plan and which require a medical exam or which make disability based inquiries (this could be the case with some health risk assessments and would apply to biometric screenings): the health plan must specify what medical information will be obtained, who will receive the information, how the information will be used, the restrictions on its disclosures and the methods that are used to prevent improper disclosure. Health programs are defined to require more than the mere collection of medical information; the program must be reasonably designed to promote health or prevent disease (various examples are provided). It is important to keep in mind that these are only proposed rules. Final rules would likely not be published and effective until next year.

The proposed wellness rules from the EEOC have been posted for pre-release. The official version is released on April 20. Access the link here for the pre-release.