

How the ADA Applies to Your Employer Wellness Program: EEOC Publishes Proposed Rule

Today the U.S. Equal Employment Opportunity Commission (EEOC) will officially publish a Notice of Proposed Rulemaking (NPRM), that will describe the ways in which the Americans with Disabilities Act (ADA) applies to employer wellness programs that are part of group health plans.

The EEOC's proposed rule would permit limited incentives to participate in employee health programs that include disability-related inquiries and/or medical examinations. However, the proposed rule asserts the EEOC's position that participation in such programs must be voluntary. Additionally, an employer may not retaliate against, interfere with the rights of, coerce, intimidate, or threaten employees who do not participate in such a program. For example an employer may not deny health coverage to or discipline an employee who chooses not to participate in the employer's program.

Such programs also must be reasonably designed to promote health or prevent disease. Furthermore, the proposed rule provides that medical information collected through an employee health program only may be provided to the employer in aggregate terms that do not disclose an employee's identity, and the information must be kept confidential as otherwise required by the ADA, HIPAA and other applicable laws.

Employee health programs that do not include disability-related inquiries and/or medical examinations, such as programs that are educational in nature and provide general health information, are not subject to the proposed rule. The NPRM is currently available on the Federal Register for public inspection: <https://www.federalregister.gov/public-inspection>. Members of the public have until June 19, 2015 to submit comments that will shape the final regulation.

Stay on the lookout for further updates from Weber Gallagher's Employment Group on the finalization of the EEOC's guidance on this topic.

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