

**Labor & Employment Alert**  
**April 2015**

**IMPORTANT NOTICE: EEOC Announces PROPOSED Rule  
Regarding Wellness Programs, Open Comment Period**

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The federal Equal Employment Opportunity Commission (“EEOC”) has issued proposed regulations regarding wellness programs. The proposed rule provides guidance on the extent to which the Americans with Disabilities Act (“ADA”) permits employers to offer incentives to employees to promote participation in employer-offered wellness programs. The proposed rule can be found here: <https://www.federalregister.gov/articles/2015/04/20/2015-08827/amendments-to-regulations-under-the-americans-with-disabilities-act#h-8>. The primary purpose of the EEOC’s proposed rule is to reconcile provisions in the Affordable Care Act (“Act”), which allow for health-contingent wellness programs, with provisions in the ADA which place limitations on some components of wellness programs.

By way of background, the ACA contains provisions expanding permissible incentives for employer sponsored health-contingent wellness programs, which may be “activity-only” or “outcome based.” Activity-only programs require employees to perform or complete an activity related to a health factor but do not require an individual to attain or maintain a specific health outcome. Outcome-based programs require employees to attain or maintain a specific health outcome, such as not smoking or obtaining certain results on biometric screening, to obtain an award. Final regulations pursuant to the ACA are in place and are effective for plan years beginning on or after January 1, 2014.

The expanded ACA rules provide that participants in health-contingent wellness programs may be able to see premiums reduced by up to 30% of the cost of employee only coverage, instead of up to 20% as allowed previously. The maximum reward could be up to 50% of the premium of the employee only plan, if the program is intended to prevent or reduce tobacco use. The final ACA regulations also include provisions regarding the design of health-contingent wellness programs intended to prevent discrimination and allow all participants to achieve the rewards. In issuing the regulations, the Departments of Labor, Treasury and HHS recognized that compliance with the ACA nondiscrimination rules is not determinative of compliance with the ADA.

Accordingly, the EEOC has issued the proposed regulations in order to reconcile the wellness program provisions of the ACA with the ADA. Primarily, the EEOC regulations focus on 2 aspects of health-contingent wellness programs: (1) maintaining the voluntary nature of the programs; and (2) notifying employees about the collection and disclosure of medical information when programs include disability-related inquiries and/or medical examinations. Such notice must clearly explain what medical information will be obtained, who will receive the medical information, how the medical information will

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be used, the restrictions on its disclosure, and the methods to prevent improper disclosure of the medical information. Further, any disability related inquiries and medical examinations must be reasonably designed to promote health or prevent disease.

Employers are encouraged to review the proposed rule carefully. The comment period runs until June 19, 2015. Additional information about the proposed rule and information about how to submit comments can be found at the above link.

*This client alert was written by Attorney Brian Fox. If you have any questions, please contact Brian Fox or the attorney responsible for your account, or call (617) 479-5000.*

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