

## **EEOC Issues Final Rules on Employer Wellness Programs**

On May 16, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) issued final rules that describe how Title I of the Americans with Disabilities Act (ADA) and Title II of the Genetic Information Nondiscrimination Act (GINA) apply to all wellness programs (not just programs that are part of a group health plan) that request health information from employees and their family members.

### **Rules' Highlights**

- The final rules clarify what it means for a wellness program to be "voluntary." For example, employees cannot be required to participate nor can the incentive be so substantial as to be coercive.
- The final ADA rule provides that voluntary wellness programs that ask questions about employees' health or include medical examinations, such as biometric screenings, may offer incentives of up to 30 percent of the total cost of a self-only coverage health plan.
- The final GINA rule provides that the value of the maximum incentive attributable to a spouse's participation may not exceed 30 percent of the total cost of self-only coverage, the same incentive allowed for the employee.

### **Wellness Program Design**

Both the ADA and GINA rules require that any wellness program, which includes disability-related inquiries or medical examinations such as biometric screenings, must be "reasonably designed to promote health or prevent disease." For example, the rules provide that a program that does collect health information but does not provide participants with results, follow-up information, or advice is not reasonably designed to promote health or prevent disease.

### **Confidentiality**

Prior to this rule, the ADA rules in effect prohibit the disclosure of an employee's medical information. The final rule adds two new requirements. An employer:

- May receive wellness program information only in aggregate terms; and
- May not require an employee to agree to a disclosure of medical information or to waive confidentiality protections under the ADA in exchange for an incentive or as a condition for participating in a wellness program, except to the extent permitted by the ADA to carry out specific activities related to the wellness program.

It also requires employers to give notice to employees about what information will be collected, with whom it will be shared and for what purpose, limits on disclosure, and how information will be kept confidential. The EEOC has indicated it will provide a sample notice on its website in the future.

**Applicability Date**

The rule provisions requiring a notice and establishing incentive limits apply only prospectively to wellness programs as of the first day of the first plan year that begins on or after January 1, 2017. All workplace wellness programs including those in which employees or their family members participate without enrolling in a particular health plan must comply with the final rules.

**Read the full EEOC Press Release**

The EEOC press release can be found through this link: <https://www.eeoc.gov/eeoc/newsroom/release/5-16-16.cfm>.

*This Client Alert was prepared by Terri O'Connell (toconnell@goodsill.com; (808) 547-5673) of Goodsill's Healthcare Industry Group.*

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