Voluntary Wellness Programs: 
When Spouses Participate

EMPLOYEE BENEFITS: Compliance FYI

On May 16, 2016, the Equal Employment Opportunity Commission (EEOC) issued long awaited final regulations explaining how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) govern voluntary wellness programs. The final rules apply to new or renewing employer-sponsored wellness programs as of the first day of the first plan year on or after January 1, 2017.

Where an employer-sponsored wellness program provides spouses with a financial incentive to respond to disability-related inquiries (health risk assessments) and/or submit to medical exams (biometric screening), employers should be aware of the special rules governing spouse participation.

Financial Incentives

Wellness programs:

- May not offer the employee more than 30% of the total cost of self-only coverage for completion of an HRA or biometric screening.
- May not combine the score of the employee and spouse to determine the financial incentive earned.
- May not offer a spouse more than 30% of the total cost of self-only coverage for completion of an HRA or biometric screening.
- May not reduce the employee’s portion based upon spouse’s refusal to participate.
- Are not required to pay the financial incentive attributable to the spouse’s participation directly to the spouse.

Notice Requirements

Voluntary wellness programs that require participants to complete a HRA or submit to biometric screening in order to earn financial incentives must comply also with the notice provisions contained within the final regulations each time the HRA and or biometric screening is offered.

Employees and spouses participating in an employer wellness program must receive the notice before providing any health information, with enough time to decide whether they want to participate. EEOC regulations do not specify how much advance notice is required, but comments suggest notice provided 10 days in advance of the deadline is compliant.
The EEOC has provided a model notice that employers may use. Employers are not required to use the exact language within the model notice. However, the notice must include the following:

- What information will be collected,
- Who will receive the information,
- How the information will be used, and
- What will be done to protect confidential information?

Employer-sponsored wellness programs that are not in compliance with the EEOC’s regulations governing financial incentives offered to spouses should consider revising their wellness program at their earliest convenience.

**Key takeaway:** Employers utilizing a voluntary wellness program should understand the new rules and make sure that their program is in full compliance with the law. Here are the major points that employers must comply with:

- The ADA limits the incentive an employee may earn to 30% of the total cost of self-only coverage.
- GINA limits the incentive a spouse may earn to 30% of the total cost of self-only coverage.
- Employee and spouse incentives may not be reduced based upon the other’s refusal to participate in the wellness program.
- Wellness programs that allow children to participate may not offer a financial incentive for participation. This requirement applies to children of all ages (i.e. adult dependents to age 26).

*Created: 8/9/2017*