

EEOC Issues Final Rules Governing Employer Wellness Programs

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The Equal Employment Opportunities Commission issued two final rules May 16, 2016 to clarify how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to workplace wellness programs that ask for health information. The rules permit employers to offer certain incentives for participation in these programs but reiterate that the collected information may not be used to discriminate against employees. The rules also place limits on the incentives and prohibit plans that provide certain insurance options only to those participating in a wellness program.

The final ADA rule permits wellness programs that request spousal health information or that require medical examinations and provides that employers may offer incentives of up to 30% of the total cost of self-only coverage. The final GINA rule extends this 30% limit to incentives provided for an employee's spouse; again, this limit is a percentage of employee-only coverage, not family coverage.

Under both rules, employers must keep medical and genetic information obtained through the wellness program strictly confidential. Employers must also provide participating employees notice about what information will be collected, who will have access to it and why, and the restrictions on disclosure.

Employers will want to review their wellness programs to ensure compliance with these incentive limitations and equal access requirements. The new rules take effect January 1, 2017.

EEOC guidance regarding the new rules can be found here:

<https://www.eeoc.gov/laws/regulations/qanda-ada-wellness-final-rule.cfm>

<https://www.eeoc.gov/laws/regulations/qanda-gina-wellness-final-rule.cfm>

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