



Labor and Employment Practice Group

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Final Rules Regarding Wellness Programs Announced

Employers who have in place, or are considering adopting, a “Wellness Program,” for their employees will want to give to consideration to new “final” rules announced last week by the Departments of Labor, Health & Human Services, and the IRS. In general terms, a “Wellness Program” is a program of health promotion or disease prevention which an employer might endorse in the hopes of improving employee health (and thus attendance) and, in turn, lowering health insurance claims.

The regulations recognize two types of Programs. The first is called a “Participatory Wellness Program”; and it pertains to one in which there is no reward to an employee for participating, or there is a reward, but it can be obtained by any employee without needing to fulfill any health factor or standard. For example, a program which reimburses an employee for some or all of the cost of a gym membership and is not contingent on the employee attaining any health goals by actually using the gym will fit in this category. Similarly, a program which reimburses an employee for attending a course to quit smoking, but which is not contingent on whether the employee succeeds in quitting, also qualifies. These Participatory Programs are generally permissible and do not need to meet additional criteria under the regulations so long as they are open to all similarly-situated individuals, regardless of health status.

The other category of Wellness Program is called “Health-Contingent.” These programs offer a reward to the employee if the employee actually satisfies some health standard. These break down into two categories: (a) “Activity-only Wellness Programs” require the employee to engage in some health-contingent program in order to obtain the reward, but the employee need not attain a specific goal; and (b) “Outcome-based Wellness Programs” which do indeed require the employee to meet or maintain some goal in order benefit from the reward.

Examples of the Activity-only programs would include walking, diet, or exercise programs. These programs have these requirements under these latest federal rules:

- 1) Eligible employees must be given a chance to qualify for the reward at least once per year.
- 2) The full reward must be available to all similarly-situated individuals.
- 3) Generally, the reward must be no more than 30% of the cost of a single-only coverage insurance premium (50% for “quit smoking” programs).
- 4) The program must be reasonably designed to actually promote health or prevent disease.
- 5) Materials about the program need to include the following type of Notice:

Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.

- 6) The program must allow a reasonable alternative for obtaining the reward through some other means in the event that the intended program is unreasonably difficult or inadvisable for an individual due to a medical condition. For example, if the Activity-only program is a walking or exercise program, an employee with severe asthma may be able to demonstrate that it is medically inadvisable or unreasonable for him to participate; in that case, the plan must offer an alternative, such as, for example, an educational program, through which the employee could earn the same reward.

Examples of the Outcome-based programs would include having a certain cholesterol or blood-pressure level, or a certain body-mass index number. Employees might qualify for these programs at the onset of the program and be expected to maintain them; or they might be rewarded by taking steps to achieve them, such as taking a health or fitness course. These programs must comply with the same 6 criteria already mentioned. However, the additional restriction is that, when there is a specific qualifying goal (e.g. cholesterol count under 200), for any employee who does not already meet that goal, the Program must offer the employee the opportunity to work with his physician to come up with an alternative program (without the specific requirement that the program be medically unreasonable for the individual).

These new regulations apply starting January 1, 2014 to all insured plans, whether or not they have "grandfather" status.

For more information regarding this advisory, contact Stephen P. Bond in Brouse McDowell's Labor & Employment practice group.

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