

Working on wellness

Companies must be thoughtful in how wellness programs are offered

INTERVIEWED BY MARK SCOTT

Corporate wellness programs lead to healthier and more productive employees, as well as reduced insurance premiums. There are challenges, however, in the design and implementation of these programs, says Daniel K. Glessner, attorney at law with Brouse McDowell.

“Wellness programs are viewed by employees in different ways,” Glessner says. “Some see them as a violation of their privacy and do not want to be told that they have to do certain things to participate in a wellness program.”

This leaves employers in a tough spot. In order to maximize savings on health care expenses and reduce insurance premiums, you need to maximize participation. But there are legal considerations in terms of what you can do to compel employees to participate.

Smart Business spoke with Glessner about designing a wellness program that is compliant, maximizes participation and reduces your insurance premiums.

How can a wellness program help a company reduce insurance premiums?

Your savings is completely based on participation. Insurance companies will say if you get 80 percent of your people to participate, you will save X on your premium — savings resulting from an anticipated reduction in claims when you have healthier employees. There are also deductible business expenses, which can provide a tax advantage to corporations that have wellness programs.

What legal considerations should companies be concerned about?

Under the Affordable Care Act, employers may reward employees for participation in nondiscriminatory health-contingent

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wellness programs. However, the Americans with Disabilities Act (ADA) requires participation in wellness programs to be voluntary. That leads employers to the question — what does voluntary mean?

In late 2014, the Equal Employment Opportunity Commission (EEOC) began targeting corporate wellness programs under the ADA. The EEOC has sued in cases where employees were required to pay the full cost of their health plan premium and fined \$50 if they did not complete a health assessment and fitness test, and in a case where an employer required that employees submit to certain testing or their insurance coverage would be cancelled.

Most recently, the EEOC sued Honeywell over its wellness program, which requires employees to get biometric testing, or stand to lose the contribution to their health savings account and incur a \$500 surcharge on their insurance premiums. This case is still pending and leaves many unanswered questions for employers. The EEOC has acknowledged that with regard to voluntary wellness programs, the meaning of ‘voluntary’ warrants further clarification.

Until that happens, be transparent in communications to your employees. Emphasize rewards for those who participate and refrain from punishing those who don't. Be clear about how personal information is collected, why it is needed, and how it

will be protected. A good rule of thumb is to offer your employees a discount on their premium in return for completing a health assessment, rather than charging them if they fail to complete testing.

How does physician pay/reimbursement factor into the wellness equation?

The payment structure from Medicare and commercial insurers is trending towards risk-sharing. Providers have a strong incentive to have a healthy patient population. Where a hospital's reimbursement is based on having healthy patients, incentive pay for its employed physicians may be based on metrics that determine a healthy patient population.

The use of electronic health records also makes it easier to have a recurring dialogue with patients that encourages a healthier lifestyle. Momentum is in place to improve wellness programs in the workplace and in the process, reduce insurance premiums. For naysayers, consider the power of one life that is changed.

If one or two people quit smoking, monitor their diet or manage their diabetes, that's a great start. Ultimately, corporate wellness programs are encouraging employees to become healthier. The challenge lies in implementing a wellness program that complies with the law and effectively incentivizes employees. ●