



Update on Wellness Best Practices

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Wellness Programs

A wellness program educates employees about health-related issues, promotes the maintenance of healthy lifestyles, and encourages employees to make healthier choices.

Some programs may be purely educational and have no financial implications.

Monthly lunch and learns (with healthy foods) or meeting space and mugs for weight-loss or other company club or giving away pedometers

Sponsor a health fair where no medical tests or screenings are done

An employer may ask employees to complete a health risk assessment without offering any incentive or may offer free blood-pressure screenings or on-site exercise classes

Other wellness programs are tied to financial incentives that may take the form of reductions in the employee's share of the premium for health care coverage, reductions in co-pays or other cost-sharing, or straight payments of cash or cash equivalents, like gift cards.

As of 2018, 10 percent of small companies and 41 percent of large companies offer financial incentives for participation in wellness programs.

Laws Affecting Wellness Benefits

ERISA

If a group health plan (or part of), disclosure and reporting obligations apply.

Integrate with major medical health plan. Wellness program provides individualized diagnostic information (e.g., cholesterol levels) to participants. Participation by non-major medical health plan enrollees requires separate disclosure.

HIPAA Nondiscrimination

Prohibits health plans from discriminating against participants on the basis of health-related factors, exception for wellness programs.

Participatory: incentives depend solely on one's involvement. Under ACA must be available to all similarly situated individuals. No limits on incentives.

Health-outcome-contingent: incentives require meeting specific health standard

1. Once a year – all similarly situated individuals
2. Incentive limits: 30% premium reduction/50% reduction for smoking cessation
3. Designed to promote health or prevent disease
4. Uniformly available and reasonable alternative provided
5. Notice of alternative provided

HIPAA Privacy and Security

Vendors involved in medical screenings and tests likely business associates

ADA / GINA

Prohibit employers from collecting employee health and genetic information.

EEOC/lawsuit risks on "involuntary medical exams or inquiries" defined in ADA/GINA

Health risk assessments, biometric/lab tests, nicotine lab tests

AARP v. EEOC (DC DC 2017). 30% incentive or penalty made disclosure involuntary. Rules vacated 1/1/2019. Rules are in limbo. Alternatives: keep 30% incentive, reduce incentive, eliminate, keep but add new alternative program.

State Discrimination Laws

Laws Affecting Wellness Benefits

Tax Issues

Wellness rewards tied to a group health plan are generally non-taxable. These include increased employer contributions to the cost of health coverage, enhanced health benefits, higher health reimbursement account (HRA) allocations and larger health savings account (HSA) employer contributions.

These amounts, however may be taxable to certain employees if provided on a discriminatory basis.

Wellness rewards provided in cash (including gift cards and other items readily convertible into cash) or in the form of goods and services that are not medical care are also taxable at the fair market value.

The only exception for goods and services is if the value of the non-cash reward is so small that it would be unreasonable to account for it.

\$50 gift card for health risk assessment; \$100 if physician reviews and confirms

Examples

The cost of employer-provided gym memberships (whether paid in full by the employer or subsidized at a fixed amount) are taxable to employees.

Use of athletic facilities on the employer's premises is nontaxable to employees; however, beginning in 2018, tax-exempt employers will owe unrelated business income tax (UBIT) on the cost of providing an onsite athletic facility if it primarily benefits employees who are highly compensated.

Legal Themes for Employer Wellness Benefits

Communication

How do employees know about the benefit?

ERISA disclosure and reporting if it is a group health plan

HIPAA notice of reasonable alternatives

Correct Design

How many wellness programs? For each, employers want to consider fair eligibility, nondiscriminatory benefit, and safe and secure data.

Code / HIPAA & ADA/GINA / HIPAA

What information comes to the employer or vendor? Does vendor indemnify employer? Should vendor sign business associate agreement?

Compensation

Is there an incentive, whether to participate or to achieve a health outcome?

Code treats amounts received by employees arising out of the employment relationship to be wages unless specifically excluded.

Why should incentive not be treated as extra wages?

Reduced health plan deductible/cost-sharing
Contribution to health flexible spending account, health reimbursement arrangement or health savings account
Gift cards limited to medical expenses