

ADA Reasonable Accommodations And Wellness Programs

March 22, 2013 | [Employee Health Issues, Currents - Employment Law](#)



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As a means of dealing with ever increasing healthcare premiums, many employers have chosen to implement wellness programs to improve the health of their workforce, thereby reducing claims. The EEOC [has recently issued an interpretation letter](#) stating that employers have an obligation to provide a reasonable accommodation for their employees who are participating in a health contingent wellness program. These types of wellness programs require an employee to meet certain standards related to a health factor (i.e. reducing blood pressure or losing weight, etc.) to achieve a reward in the form of reduced premiums or deductibles.

The interpretation letter states that while wellness programs are “voluntary,” an employer is still required under the ADA to provide a reasonable accommodation so that all employees may enjoy “equal benefits and privileges of employment.” The employer was requesting guidance on a “Medication Possession Ratio > 80%” policy which provides a reward of a waiver of annual deductible to those individuals who take more than 80% of his/her required medication. The EEOC stated that the company would “have to provide a reasonable accommodation to allow the individual to earn the reward” if he/she suffered from a covered disability.

While this concept makes sense for other health contingent plans where the meeting of the goal is not medically advisable for the individual (i.e. requiring a morbidly obese person to reach a normal body mass index (BMI) in a short period), this seems less understandable in this context. How a disability would prevent a person from taking his/her medicine to treat a disability is unclear. This is another nebulous requirement of both the ADA and the Affordable Care Act’s (ACA) nondiscrimination requirements that employers face. However, it is clear that HIPAA’s “reasonable alternative standard” for wellness programs and ADA’s “reasonable accommodation” obligations are overlapping to permit disabled individuals to achieve the same reward from these types of wellness programs.

This development is even more important given the recent [IRS/DOL/HHS regulations](#), which have increased the maximum permissible awards for health-contingent wellness programs from 20 percent of the cost of coverage to 30 percent. They have also increased the maximum reward to 50% of the cost of coverage for wellness programs intended to prevent or reduce tobacco use. These new rewards will be effective January 1, 2014. As employers prepare for the onslaught of ACA changes in healthcare, add this to the list of things to consider going forward.

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