

ALERTS**Labor And Employment Law Alert - EEOC Releases Proposed Rule On Employer Wellness Programs**

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On April 16, the Equal Employment Opportunity Commission (EEOC) issued a [Notice of Proposed Rulemaking](#) that would amend the regulations and interpretive guidance under Title I of the Americans with Disabilities Act (ADA) as they relate to employer wellness programs.

The proposed rule makes clear that employers can ask employees to submit to health inquiries and/or examinations as part of wellness program as long as the program is voluntary and reasonably likely to promote health or prevent disease. The medical information obtained in the wellness program can only be disclosed to the employer in aggregate form so that it does not reveal the identity of any employee. The proposed rule requires employers to give employees notice of the medical information that would be collected under the wellness plan and state with whom the information would be shared, how it would be used and how it would be kept confidential.

This proposed rule has been much anticipated as the Health Insurance Portability and Accountability Act (HIPAA), as amended by the Affordable Care Act, contained provisions governing wellness plans but it was unclear how such plans could comply with the ADA. Recently, the EEOC filed lawsuits against employers claiming that their wellness plans were not “voluntary.” The proposed rule allows employers to offer employees incentives under a wellness plan of up to 30 percent of the total cost of employee-only coverage. If the incentives exceed this amount, the plan is deemed involuntary. The proposed rule also requires employers to make reasonable accommodations for employees with disabilities so they can participate in the employer’s wellness plan and earn whatever incentives the employer offers.

The EEOC will be accepting comments on these proposed regulations until June 19, 2015. The EEOC will then review the comments and issue the final regulations.

For more information regarding the proposed regulations, please contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm’s Labor and Employment Department in the following offices:

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