

Legal Compliance Checklist

This list identifies compliance questions and comments that should trigger concepts covered in the presentation “Designing a Legally Compliant Wellness Program.” Use the checklist as a guide to help you consider compliance issues that may arise in designing workplace wellness programs. Please note, however, that this list is not exhaustive. Therefore, it does not cover all potential compliance issues that could occur in designing or implementing workplace wellness programs. To ensure a thorough compliance review, consult your legal counsel.

- Is program part of group health plan?
 - A number of workplace wellness laws apply only to programs tied to Group Health Plans.
- Does employee get reward regardless of results?
 - Participatory vs. Health Contingent under HIPAA/ACA rules.
- If Health Contingent, do we meet ACA 5-factor test?
- Are reasonable accommodations or waivers available so all employees have equal opportunity to earn reward?
- Did we provide notice of the availability of reasonable accommodations or waivers?
- Do we offer follow-up, such as health coaching, after collecting health information?
- Is the program sensitive to the varying abilities and life circumstances of our employees?
 - ADA, Title VII, ADEA equal opportunity considerations
- Does wellness program include HRA or biometric screen and is that program part of a group health plan?
 - If yes, EEOC proposed ADA regulations on incentive limits and applicability of ADA insurance safe harbor.
- Does HRA ask about family history or other sensitive information?
 - If yes, does employee get reward regardless? Think GINA.
- Does group health plan collect genetic information during open enrollment?
 - GINA Title I prohibits collection of family medical history in connection with open enrollment.
- Are there incentives for spousal participation in an HRA or biometric test?
 - If yes, see EEOC proposed GINA rules on incentive limits and asking questions about past or current health status only.
- If there are incentives for spousal participation in HRA/biometric screen, have we provided the requisite notice to the spouse?
 - Under EEOC proposed GINA rules, notice must meet certain requirements.
- Have we reviewed our confidentiality obligations, policies and procedures?
- Has our vendor reviewed its confidentiality obligations, policies and procedures?
- Have we obtained employee buy-in and communicated the purpose/rationale of the program before roll-out?
- Will this program cause employee discontent?
 - If yes, what can we do to minimize that?

