

Participatory Workplace Wellness Programs: Reward, Penalty, and Regulatory Conflict

New York, New York, June 4, 2015—Workplace wellness programs have the potential to improve workers' health and reduce health care costs. Providing incentives for participating workers to complete a health risk assessment is a common feature of these programs. But legal and ethical concerns emerge when employers use incentives that raise questions about the voluntariness of such programs, according to a new study in the June 2015 issue of *The Milbank Quarterly*.

The Equal Employment Opportunity Commission (EEOC) recently published draft rules to address some of these concerns by setting a limit on the financial penalties that may be assessed for participatory programs. However, other legal options are available and additional ethical issues remain, argues study author Jennifer Pomeranz of the College of Public Health, Temple University. This article is particularly timely in light of the commission's new draft rules.

Background

Workplace wellness programs are generally divided into two categories: health-contingent programs, which require individuals to meet a standard related to health in order to receive a reward, such as not using tobacco or achieving a lower cholesterol level; and participatory programs, which are available to employees regardless of their health status and may reimburse employees for the cost of a health club membership or provide a reward for attending a health-related seminar.

In 2013, the Departments of Treasury, Labor, and Health and Human Services passed regulations for participatory programs, updating their 2006 regulatory framework, that give employers the ability to impose penalties on employees who do not fulfill the requirements of a participatory program. This includes completing a health risk assessment.

Employers that assess penalties on employees who do not complete a health risk assessment as part of a workplace wellness program risk violating the Americans with Disabilities Act (ADA), which states that employers shall not require a medical examination or inquire into an employee's medical history.

Findings

"This paper discusses the conflict between the workplace wellness regulations and the ADA," says Pomeranz. "It explores the potential inconsistency between the Affordable Care Act's language related to permissible rewards and that of the implementing regulations. The former only expressly includes penalties for health-contingent programs, while the latter conflates the concept of rewards and penalties for all workplace wellness programs, including participatory programs. The paper also looks at options for the Departments to amend their regulatory definition of reward to align it with the enabling legislation. This would provide increased protection for employees and solve the conflict between the workplace wellness regulations and the ADA."

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