



WELLNESS PROGRAMS

What rules and regulations apply to employer sponsored wellness programs?

Many employers offer wellness programs to support employees and their family members in improving their health. In addition to encouraging a culture of health, these programs are designed to reduce health care costs for both employees and the company. There are three main federal regulations that impact wellness programs: ACA, Americans with Disabilities Act (ADA) and Genetic Information and Nondiscrimination Act (GINA).

The D.C. District Court issued an order on Dec. 20, 2017, in the matter of AARP vs. EEOC, vacating the EEOC's final regulations for the ADA and GINA. This order is not effective until Jan. 1, 2019. The Court further ordered the EEOC to release new proposed rules, which are expected to be published before Aug. 31, 2018.

ACA regulations apply to all wellness programs that are, or are part of, group health plans; whereas ADA regulations apply to wellness programs that include medical examinations or inquiries, and GINA regulations apply to wellness programs that solicit genetic information from employees, spouses or their dependents.

There are key differences with these rules. These include:

- Voluntary participation requirements
- Incentive amounts (see question below) and calculations
- Reasonable accommodations and alternatives
- Notice and confidentiality requirements

Complying with one set of rules and regulations does not necessarily ensure compliance with all the others.



Incentives must be limited in accordance with applicable ACA, ADA and GINA rules. These are the key differences:

	ACA	ADA	GINA
Rule applies to:	All enrollees	Employees only	Spouse only
Incentive* limit for programs that do not include tobacco cessation	30%	30%	30%
Incentive* limit for programs that include tobacco cessation	50%	50% self-reported use 30% clinical tests	No requirement (tobacco use is not a genetic condition)
Based on what total cost (Employer and employee share)	Based on enrollment, self-only coverage 30% of family coverage if spouse and dependents participate	Certain self-only coverage (not always based on enrollment)	Certain self-only coverage (not always based on enrollment) Can increase to two times 30% of self-only coverage if an employee's spouse provides personal health information as part of a health risk assessment
Included in max limit	Health-contingent program incentives	Health-contingent program incentives Participatory program Incentives	Not specified
Frequency of incentive	Health-contingent program: Must provide chance to qualify at least once per year Participatory program: No requirement	No requirement	No requirement

* All incentives offered through a wellness program should be reviewed for tax purposes. Incentives are generally subject to tax unless (1) given as a premium credit, (2) deposited into an FSA/HSA/HRA, or (3) are prizes of nominal value (e.g., pens or t-shirts). Cash or gift card incentives are always taxable.