



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
Legal Counsel

**ADA: VOLUNTARY WELLNESS PROGRAMS & REASONABLE ACCOMMODATION
OBLIGATIONS**

January 18, 2013

[ADDRESS]

Dear _____:

This is in response to your November 2, 2012 inquiry to the Nashville Area Office of the Equal Employment Opportunity Commission (EEOC) regarding health plans that provide greater benefits to employees with certain adverse health conditions. You describe a plan, offered to eligible employees (e.g. employees with diabetes) on a voluntary basis, which waives the plan's annual deductible if the employee meets certain requirements, such as enrollment in a disease management program or adherence to a doctor's exercise and medication recommendations.

Contrary to your assertion, we believe the program you describe would be considered a wellness program. A wellness program encourages employees to lead healthier lifestyles and reduce their risk of disease. Wellness programs may include, for example, disease management programs, smoking cessation programs, or case management programs.¹ In order to participate in a wellness program, employees may be asked to complete a health risk assessment (HRA) or undergo medical testing or screening. You state that the program you have in mind does not require completion of an HRA. However, we assume that a condition of participation is that employees disclose that they have qualifying health conditions, which would be a disability-related inquiry, and that other disability-related inquiries or medical examinations would be required to determine continued eligibility for any incentive offered.

Voluntary Wellness Programs

Title I of the ADA strictly limits when an employer may make disability-related inquiries of employees or ask them to take medical examinations. *See* 42 U.S.C. § 12112(d); 29 C.F.R. §§1630.13, 1630.14; EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA ("Enforcement Guidance"), available on our website at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.) Disability-related inquiries and medical examinations are permitted as part of a voluntary wellness program. *Id.* Q&A 22. A wellness program is voluntary as long as an employer neither requires participation nor penalizes employees who do not participate.

¹ See Department of Labor in Field Assistance Bulletin No. 2008-02.

The plan you describe provides a reward for participation, i.e. waiver of the annual deductible. The EEOC has not taken a position on whether and to what extent a reward amounts to a requirement to participate, or whether withholding of the reward from non-participants constitutes a penalty, thus rendering the program involuntary.

Reasonable Accommodation Obligations

If a wellness program is voluntary and an employer requires participants to meet certain health outcomes or to engage in certain activities in order to remain in the program or to earn rewards, it must provide reasonable accommodation, absent undue hardship, to those individuals who are unable to meet the outcomes or engage in specific activities due to a disability. 42 USC 12112(b)(5)(A)(prohibiting covered entity from failing to provide reasonable accommodation absent undue hardship); 29 C.F.R. §1630.9(a)(same); 20 C.F.R. §1630.2(o)(1)(iii)(reasonable accommodation includes modifications and adjustments that enable a covered entity's employees to enjoy "equal benefits and privileges of employment"). You specifically mention requiring participants to have a "Medication Possession Ratio > 80%" which identifies the extent to which an individual is taking his or her required medication. Assuming the program is voluntary and an employee is unable to meet the MPR because of a disability, the employer would need to provide a reasonable accommodation to allow the individual to participate in the plan and to earn whatever reward is available.

You also ask whether a participant can be lawfully removed from the plan for failure to comply with plan requirements. The individual would then receive the same benefits available to other employees, i.e. the "standard" plan. If a plan is voluntary and persons who are unable to meet the plan requirements because of a disability are given reasonable accommodations, it would not be unlawful to remove an employee from the "higher benefit" plan for failing to meet requirements, as long as he or she remained eligible to participate in the employer's standard benefit plan.

I hope this information is helpful. If you have further questions, feel free to contact Christopher Kucynski or Danielle Hayot at 202-663-4640. This has been an informal discussion of the issues you raised and does not constitute an official opinion of the EEOC.

Sincerely,

Peggy R. Mastroianni
Legal Counsel