

## **Fact Sheet for Small Business:**

### **The EEOC's Notice of Proposed Rulemaking on the Americans with Disabilities Act and Employee Wellness Programs**

On April 20, 2015, the U.S. Equal Employment Opportunity Commission (EEOC) published a Notice of Proposed Rulemaking (NPRM) in the Federal Register that describes how Title I of the Americans with Disabilities Act (ADA) applies to employee wellness programs that are part of group health plans and that include questions about employees' health (such as questions on health risk assessments) or medical examinations (such as screening for high cholesterol, high blood pressure, or blood glucose levels). Interested members of the public have **60 days from the date of publication** of the NPRM to provide comments, or until June 19, 2015. The NPRM is available at the [Public Inspection](#) portion of the Federal Register. This fact sheet explains the contents of the NPRM.

#### **Wellness programs must be reasonably designed to promote health or prevent disease.**

- They must have a reasonable chance of improving health or preventing disease in participating employees, must not be unduly burdensome to employees, and must not violate the ADA.
- A program that collects information on a health risk assessment to provide feedback to employees about their health risks, or that uses aggregate information from health risk assessments to design programs aimed at particular medical conditions is reasonably designed. A program that collects information without providing feedback to employees or without using the information to design specific health programs is not.

#### **Wellness programs must be voluntary.**

- Employees may not be required to participate in a wellness program, may not be denied health insurance or given reduced health benefits if they do not participate, and may not be disciplined for not participating.
- Employers also may not interfere with the ADA rights of employees who do not want to participate in wellness programs, and may not coerce, intimidate, or threaten employees to get them to participate or achieve certain health outcomes.
- Employers must provide employees with a notice that describes what medical information will be collected as part of the wellness program, who will receive it, how the information will be used, and how it will be kept confidential.

#### **Employers may offer limited incentives for employees to participate in wellness programs or to achieve certain health outcomes.**

- The amount of the incentive that may be offered for an employee to participate or to achieve health outcomes may not exceed **30 percent of the total cost of employee-only coverage**.
- For example, if the total cost of coverage paid by both the employer and employee for self-only coverage is \$5,000, the maximum incentive for an employee under that plan is \$1,500.

**Medical information obtained as part of a wellness program must be kept confidential.**

- Generally, employers may only receive medical information in aggregate form that does not disclose, and is not reasonably likely to disclose, the identity of specific employees.
- Wellness programs that are part of a group health plan may generally comply with their obligation to keep medical information confidential by complying with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.
- Employers that are not HIPAA covered entities may generally comply with the ADA by signing a certification, as provided for by HIPAA regulations, that they will not use or disclose individually identifiable medical information for employment purposes and abiding by that certification.
- Practices such as training individuals in the handling of confidential medical information, encryption of information in electronic form, and prompt reporting of breaches in confidentiality can help assure employees that their medical information is being handled properly.

**Employers must provide reasonable accommodations that enable employees with disabilities to participate and to earn whatever incentives the employer offers.**

- For example, an employer that offers an incentive for employees to attend a nutrition class must, absent undue hardship, provide a sign language interpreter for a deaf employee who needs one to participate in the class.
- An employer also may need to provide materials related to a wellness program in alternate format, such as large print or Braille, for someone with vision impairment.
- An employee may need to provide an alternative to a blood test if an employee's disability would make drawing blood dangerous.