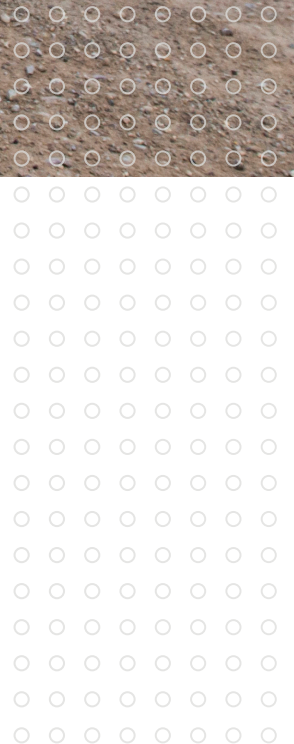




Rethinking Your Wellness Program for 2019

5 Options to Consider



In August 2017, a Federal Court directed the Equal Employment Opportunity Commission (“EEOC”) to rewrite its workplace wellness incentive rules under the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”). The current EEOC rules allow a wellness program to offer an incentive or surcharge of up to 30% of the cost of self-only coverage. By court order, these incentive rules will be eliminated effective January 1, 2019.

This ruling has no effect on the wellness rules under the Health Insurance Portability and Accountability Act (“HIPAA”) and the Affordable Care Act (“ACA”). However, the implications of this court decision mean that employers may need to reevaluate their wellness programs in 2019.

In the absence of clear guidance from the EEOC, HUB International offers an overview of the available approaches – ranging from conservative to aggressive— that clients may take in rethinking their wellness programs.

1. No Incentives/Surcharges (most conservative approach)

Wellness programs that do not mandate participation and do not provide any incentives/surcharges will avoid non-compliance with EEOC rules. These types of wellness programs can still include biometric screenings/medical examinations and health risk assessment (“HRA”) features that employees and spouses are encouraged, but not required, to complete.

HOW TO ENCOURAGE HEALTHY BEHAVIOR: To truly create an intrinsic motive toward good health, clear leadership support and effective communications should be the keystone of all wellness programs, regardless if an incentive exists.

2. Eliminate Components of ADA Concern (conservative approach)

Employers who remove any biometric screening/medical examinations, HRAs, or requests for genetic information from their programs will also avoid non-compliance with EEOC rules.

HOW TO CONTINUE TO CREATE A WELLNESS STRATEGY THAT WORKS FOR YOUR EMPLOYEES: Clients who eliminate health information data collection (HRA or screenings) from their wellness program can use claims data to identify health risks and survey employees to determine needs and interest. In doing so, clients should ensure compliance with HIPAA and GINA relating to the use of health information.

3. Points Based Programming including ADA Components as Optional (middle ground approach)

Employers could make biometric screenings/medical examinations optional components in a larger menu of activities. In this scenario a participant may choose to complete a health risk assessment or undergo a screening, but they can still earn the same reward through other means, such as participating in health-related activities, education or events.

HOW TO CONTINUE TO REWARD EMPLOYEES FOR HEALTHY DECISIONS: Most wellness platforms offer the option to assign points to a variety of activities. A good wellbeing consultant can offer the pros and cons of using a no-cost carrier solution versus a third party vendor platform.

4. Modest Incentives (middle ground approach)

Without guidance, it is unclear what level of incentive is acceptable under the ADA and GINA. Wellness programs that provide only modest incentives will present some risk, but less than a full incentive. The definition of “modest” may be significantly less than 30%.

HOW TO PROMOTE THE INTRINSIC VALUE OF GOOD HEALTH: Clients who are introducing wellness programs for the first time should focus on intrinsic motivators instead of monetary incentives. For those clients who have historically tied incentives to screenings and HRAs, now is a good time to re-focus efforts on communicating the value of good health. The HUB Communications & Design team and Health & Performance team can support clients with this effort.

5. Maintain Max Up to 30% Incentive (most aggressive approach)

Wellness programs with biometric screening and/or HRAs that provide incentives at or near the current 30% incentive level under the EEOC regulations may comply with the ADA and GINA. Continuing to offer incentives at this level after 2018 may expose employers to employee lawsuits and EEOC enforcement actions, although the likelihood of this is unclear.

UNDERSTAND YOUR RISK IF YOU DECIDE TO STAY THE COURSE: Employers should be aware that wellness vendors are protective of their current business models, and may take a “wait and see” approach. Employers must make their own decision as to how much risk they can take on going forward, until further direction is provided by the EEOC.

Choosing the Strategy that's Right for Your Organization

While the future direction of the EEOC rules is uncertain, employers can consider the following when determining their strategy regarding incentives:

- **Risk Tolerance.** Employers should consider how aggressive they want to be. Wellness programs that provide no or smaller incentives present less legal risk than wellness programs that provide larger incentives. However, there are currently only a handful of high profile reported cases where an employee sued an employer over their wellness program requirements.
- **Workforce Composition.** In setting an incentive, the employer should consider the wage composition of its workforce. For example, what is “modest” for a higher-paid worker may not be for a lower-paid worker. Creating “equity” within pay scales can be accomplished through a plan design change. Talk to your account team about this option.
- **Culture Matters.** An employer with a strong culture of health may not want to be seen as backing away from wellness. With proper messaging and by introducing other services to replace a screening/HRA or rich incentive, this impression can be mitigated. By contrast, an employer considering a wellness program for the first time may want to begin with a focus on intrinsic motivators, such as employee recognition, and messages about caring for employee’s wellbeing as they implement a new program.
- **Effect on Participation.** Remember that understanding one’s personal risks and achieving good health is in itself a reward. Convincing a target audience that this is indeed true is where the artistry of good communication comes in. There may be some concern that higher financial incentives are driving higher participation, while smaller incentives may, in turn, lower participation. An employer that reduces financial incentives should also consider how it can round-out its intrinsic rewards to help ease the transition for employees, and find new ways to maintain high engagement rates.
- **Communication.** Research has shown that strong communication and leadership support can lead to higher participation levels. This can offset the impact of a reduction in the size of an incentive. Whatever decision an employer makes, consider how it should be communicated to employees. Change can be difficult and a clear and complete communication strategy can go a long way to making the transition easier.
- **Notice requirements.** Even though the incentive portion of the ADA and GINA rules may go away, employers should continue to provide the notice required by the ADA if their program continues to include screening and/or HRAs and abide by any applicable GINA consent requirements.

Like any other business strategy, your health and performance initiative is best managed when measured. It’s important to be thoughtful about what measurements are most meaningful for your organization.

HUB can advise you on how to confidently navigate change, and help develop a strategy to support and engage your people by promoting a culture of health and high performance.

Talk to your HUB advisor if you have questions or need assistance in optimizing your health and performance program.

[Contact a HUB advisor](#)

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