“What About Me?” Says the EEOC
Legal Uncertainty Regarding Workplace Wellness Programs

Workplace Wellness Programs
Legal Parameters…?

• What is permissible under the ACA?
• Long road for Tri-Agencies to decide that…
• “Oh wait, what about me?” says the EEOC!
Workplace Wellness Programs:
Permissible Incentives under ACA

- May vary premiums by 30% and up to 50% as provided by the Secretary (§2705)
- May not discriminate based on health factor, unless:
  - Favors individuals with adverse health status, or
  - Meets HIPAA wellness rules

Regulatory Implementation

- Tri-Agency Rules Proposed November 26, 2012
- Final Tri-Agency Regulations June 3, 2013
- Applicable for plan years after January 1, 2014

...clear?
EEOC Action:
ACA Compliance Isn’t Enough

• Litigation
  – Honeywell TRO

• Proposed Regulations
  – EEOC issued Proposed Rules on April 20, regarding ADA
  – More to Come….
    • GINA
    • Title VII
    • ADEA

Thank You

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