Among Firms Offering Health Benefits, Percentage Offering a Particular Wellness Program to Their Employees, by Firm Size, 2014

* Estimate is statistically different between All Small Firms and All Large Firms within category (p<.05).

** Biometric screening is a health examination that measures an employee’s risk factors such as cholesterol, blood pressure, stress, and nutrition.

Among Firms Offering Health and Wellness Benefits, Percentage of Firms That Offer Incentives to Employees Who Participate in Wellness Programs, by Firm Size, 2014

<table>
<thead>
<tr>
<th>FIRM SIZE</th>
<th>Workers Pay Smaller Percentage of the Premium</th>
<th>Workers Have Smaller Deductible</th>
<th>Receive Higher HRA or HSA Contributions</th>
<th>Receive Gift Cards, Travel, Merchandise, or Cash</th>
<th>Any Financial Incentive to Participate in Wellness Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-49 Workers</td>
<td>8%</td>
<td>1%</td>
<td>0%</td>
<td>12%</td>
<td>16%</td>
</tr>
<tr>
<td>50-199 Workers</td>
<td>6</td>
<td>2%</td>
<td>9%</td>
<td>23%</td>
<td>28%</td>
</tr>
<tr>
<td>200-999 Workers</td>
<td>11</td>
<td>3%</td>
<td>6%</td>
<td>22%</td>
<td>32%</td>
</tr>
<tr>
<td>1,000-4,999 Workers</td>
<td>24</td>
<td>6%</td>
<td>14%</td>
<td>31%</td>
<td>51%</td>
</tr>
<tr>
<td>5,000 or More Workers</td>
<td>23</td>
<td>6%</td>
<td>17%</td>
<td>34%</td>
<td>55%</td>
</tr>
<tr>
<td>All Small Firms (3-199 Workers)</td>
<td>8%</td>
<td>1%</td>
<td>2%</td>
<td>13%</td>
<td>18%</td>
</tr>
<tr>
<td>All Large Firms (200 or More Workers)</td>
<td>14%</td>
<td>3%</td>
<td>8%</td>
<td>24%</td>
<td>36%</td>
</tr>
<tr>
<td>ALL FIRMS</td>
<td>8%</td>
<td>1%</td>
<td>2%</td>
<td>14%</td>
<td>19%</td>
</tr>
</tbody>
</table>


Wellness Programs Offering Incentives Based on Health Status Implicate ERISA

- Employee Retirement Income Security Act (ERISA) prohibits group health plan discrimination based on health status
- Exceptions for certain workplace wellness programs allowed
- The Affordable Care Act (ACA) amended workplace wellness program standards under ERISA
- ACA defined two types of wellness programs:
  - *Health-contingent* wellness programs offer reward (or avoidance of penalty) based on an individual’s health status
    - 5 new standards for health-contingent programs specified
  - *Participatory* wellness programs do not adjust health plan premiums or benefits based on individual’s health status
    - Standards for health-contingent wellness programs do not apply
ACA Standards for Health-Contingent Wellness Programs

- Financial incentive cannot exceed 30% of total plan cost;
  - Up to 50% of plan cost if tobacco incentives included;
  - Based on family plan cost if dependents can participate
  - 2014 average plan cost was $6,025 (self-only) $16,834 (family)
- Offer waivers, reasonable alternative means to earn reward
- At least annual opportunity to earn reward
- Notice requirements
- Reasonably designed:
  - Program has reasonable chance of promoting health, is not overly burdensome, not a subterfuge for discrimination
  - The reasonably designed standard is “intended to be an easy standard to satisfy . . . There does not need to be a scientific record that the method promotes wellness to satisfy this standard. The standard is intended to allow experimentation in diverse ways of promoting wellness.”

Source: 78 Federal Register 33162

Large Firm Wellness Programs That Reward Employees for Meeting Biometric Outcome, and Value of Incentives, 2014

NOTE: Biometric screening is a health examination that measures an employee’s risk factors. Biometric outcomes could include meeting a target body mass index (or BMI) or cholesterol level but not goals related to smoking.

One-third of employers with health benefits offer workers opportunity to complete health risk assessment (HRA)

<table>
<thead>
<tr>
<th></th>
<th>Large Firms Offering HRA (51%)</th>
<th>Small Firms Offering HRA (34%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FIRM SIZE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>200-999 Workers</td>
<td>46%</td>
<td>63%</td>
</tr>
<tr>
<td>1,000-4,999 Workers</td>
<td>64%</td>
<td>67%</td>
</tr>
<tr>
<td>5,000 or More Workers</td>
<td>64%</td>
<td>52%</td>
</tr>
<tr>
<td><strong>All Large Firms</strong></td>
<td>51%</td>
<td>64%</td>
</tr>
</tbody>
</table>

Source: KFF/HRET Employer Health Benefits Survey, 2014

Large Firm Wellness Programs that Offer Incentives to Complete HRA, and Value of the Incentive, 2014

<table>
<thead>
<tr>
<th></th>
<th>Percentage of Large Firms Offering Health Risk Assessment that Offer Financial Incentives to Complete a Health Risk Assessment</th>
<th>Among Large Firms Offering Financial Incentives for Completing Health Risk Assessment, Maximum Value of Incentive</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>FIRM SIZE</strong></td>
<td><strong>Less Than $500</strong></td>
</tr>
<tr>
<td>200-999 Workers</td>
<td>46%</td>
<td>63%</td>
</tr>
<tr>
<td>1,000-4,999 Workers</td>
<td>64%</td>
<td>67%</td>
</tr>
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<td><strong>All Large Firms</strong></td>
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<td>64%</td>
</tr>
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</table>

Wellness Programs Making Medical Inquiries Implicate the Americans with Disabilities Act (ADA)

- ADA prohibits employment discrimination based on disability
- ADA prohibits non-job related medical inquiries by employers except through “voluntary” wellness programs
  - EEOC guidance in 2000 said “voluntary” means employee cannot be required to participate or penalized for not participating
- Genetic Information Nondiscrimination Act (GINA) has parallel provisions about medical inquiries through wellness programs
- Equal Employment Opportunity Commission (EEOC) enforcement actions in 2014 against employers that penalized workers for not completing wellness program medical inquiries
- EEOC proposed rule in April 2015 would modify ADA standards
  - Standards different for wellness programs offered as part of a group health plan vs. outside of group health plan

Most Think It’s OK For Employers To Offer Wellness Programs, But Not To Tie Premiums To Participation Or Health Outcomes

Percent who say each of the following is appropriate/not appropriate for employers to do...

<table>
<thead>
<tr>
<th></th>
<th>TOTAL PUBLIC</th>
<th>AMONG THOSE AGES 18-64 WITH INSURANCE THROUGH AN EMPLOYER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer wellness programs that promote healthy behaviors</td>
<td>76% (appropriate)</td>
<td>80% (appropriate)</td>
</tr>
<tr>
<td>Require workers to pay higher health insurance premiums if they DON’T participate in wellness program</td>
<td>35% (appropriate)</td>
<td>37% (appropriate)</td>
</tr>
<tr>
<td>Require workers to pay higher premiums if they are unable to meet certain health goals</td>
<td>22% (appropriate)</td>
<td>21% (appropriate)</td>
</tr>
</tbody>
</table>

NOTE: Don’t know/ refused answers not shown.
SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted June 12-18, 2014)
**Proposed ADA standards for wellness programs with medical inquiries and offered as part of a group health plan**

- Financial incentives, whether reward or penalty, permitted up to maximum of 30% of total self-only cost of group health plan
  - Incentive maximum applies to health-contingent and participatory wellness programs
  - Incentive maximum applies to all participation incentives combined, including those offered for health-contingent wellness programs
- Notice standard requires workers to be notified what health information will be collected, how it will be used, what privacy protections apply
- Compliance with HIPAA privacy standards generally satisfies ADA privacy protections when wellness programs are offered as part of a group health plan
- “Part of a group health plan” not defined

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**Proposed ADA standards for workplace wellness programs offered as part or outside of the group health plan**

- All wellness programs that make medical inquiries must be reasonably designed, not overly burdensome, not subterfuge for discrimination,
- A program is not reasonably designed if it exists mainly to shift costs from the employer to targeted employees based on their health
- Public comment requested on best practices to ensure wellness programs are designed to promote health and do not shift costs to employees with health conditions
### RAND studies of workplace wellness programs

- RAND study found wellness programs reduced health care costs by $30 per member per month, on average
  - 87% of savings attributable to disease management programs
  - Lifestyle programs yield significant health improvements, though modest, not clinically significant
- Impact of incentives on wellness program participation
  - Financial incentives increase participation by 20 percentage points
  - Strengthening program design nearly as effective as incentives
    - 52% median participation rate in comprehensive programs
    - 20% median participation rate in limited programs
- Elements of successful programs:
  - Clear communications
  - Engage managers
  - Engage all employees
  - Culture of wellness
  - Convenient, accessible, relevant
  - Ongoing evaluation