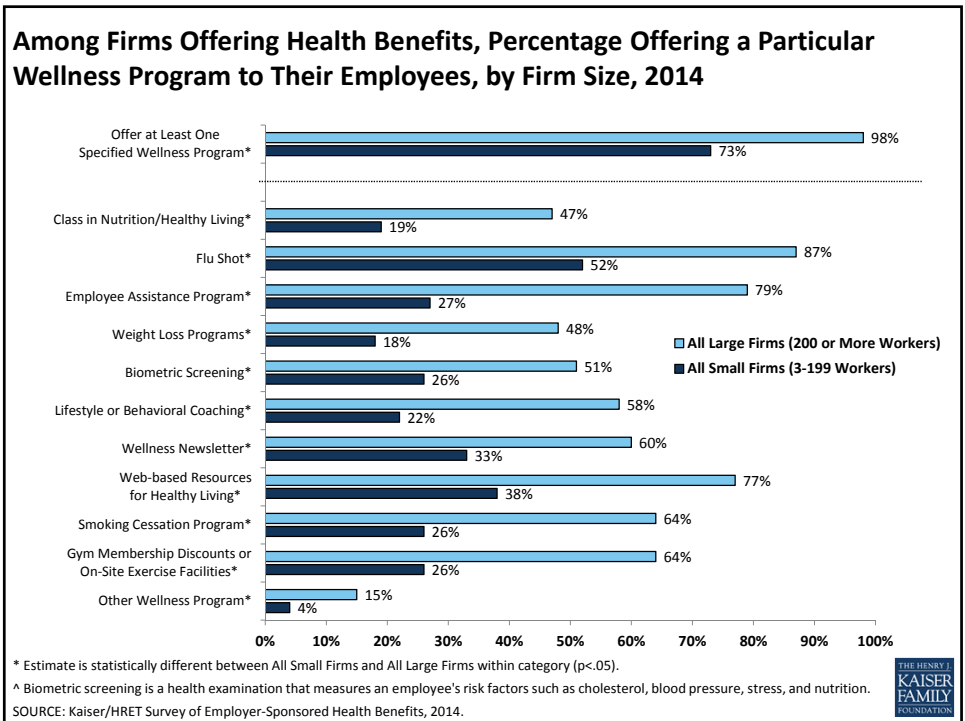


Workplace Wellness Programs and Regulatory Requirements

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

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

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2014.



Wellness Programs Offering Incentives Based on Health Status Implicate ERISA

- Employee Retirement Income Security Act (ERISA) prohibits group health plan discrimination based 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



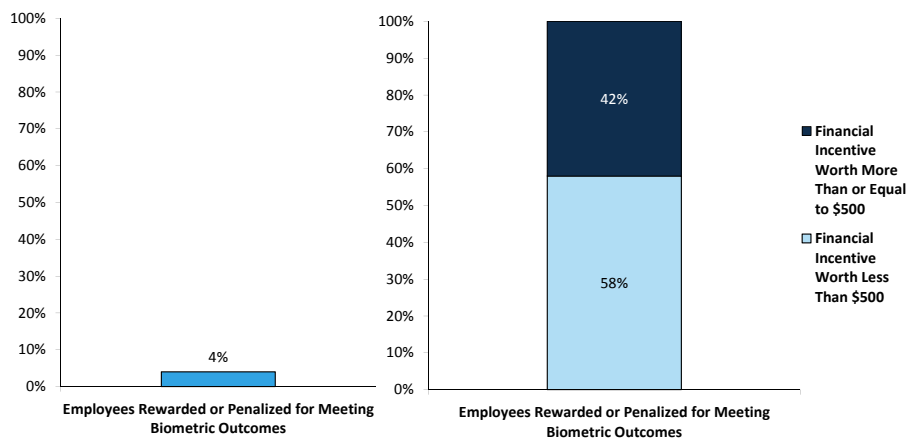
ACA Standards for Health-Contingent Wellness Programs

- 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



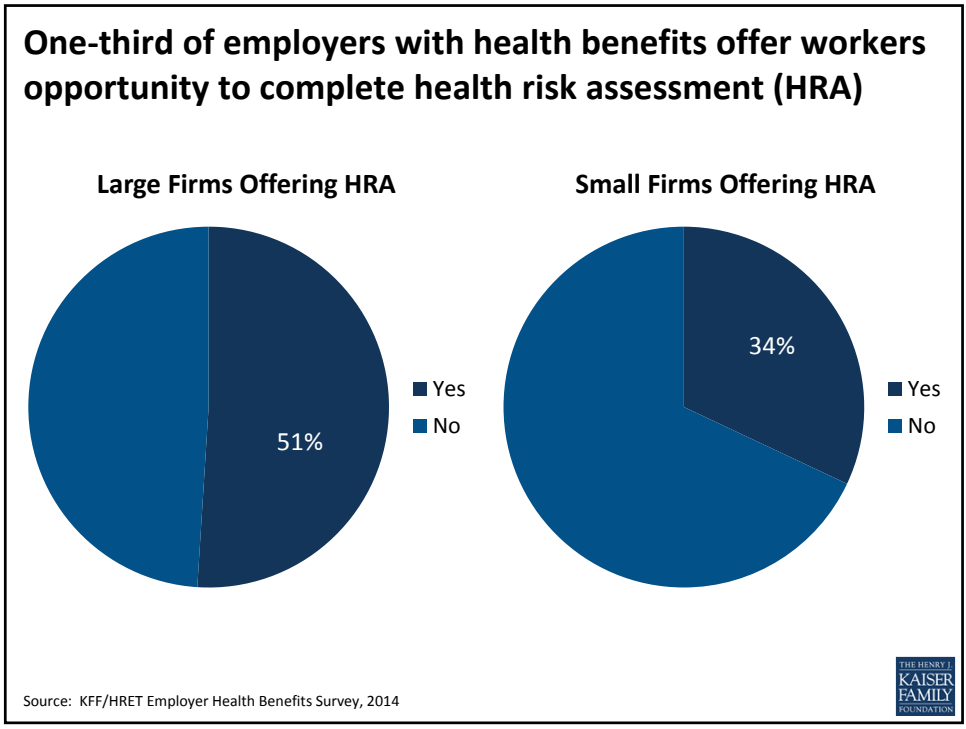
Large Firm Wellness Programs That Reward Employees for Meeting Biometric Outcome, and Value of Incentives, 2014



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.

SOURCE: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2014.





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

FIRM SIZE	Percentage of Large Firms Offering Health Risk Assessment that Offer Financial Incentives to Complete a Health Risk Assessment	Among Large Firms Offering Financial Incentives for Completing Health Risk Assessment, Maximum Value of Incentive	
		Less Than \$500	\$500 or More
200-999 Workers	46%	63%	37%
1,000-4,999 Workers	64	67	33
5,000 or More Workers	64	52	48
All Large Firms	51%	64%	36%

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2014.



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



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

**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 all employees
 - * Convenient, accessible, relevant
 - * Engage managers
 - * Culture of wellness
 - * Ongoing evaluation

