




Disability and Wellness Programs



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Samuel Bagenstos

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The ADA and Reasonable Accommodation

- 42 U.S.C. 12112(b)(5)(A):
 - ER must make “reasonable accommodations” to EE’s disability absent “undue hardship”
 - **Key Q: Do outcome-contingent or participatory wellness programs provide waivers or alternative standards for EEs with disabilities?**

The ADA and Medical Inquiries

- 42 U.S.C. 12112(d)(4):
 - ER can’t make medical exam or inquiry of EE unless “job-related and consistent w/business necessity”
 - *Exception* for “voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site”
 - **Key Q: Are wellness programs “voluntary”?**
 - *ADA, unlike HIPAA, has no numerical threshold for “voluntary.”*

Why Does the ADA Limit Medical Examinations/Inquiries?

- History of discrimination
- Medical exams/inquiries as ways of uncovering hidden disabilities, triggering discrimination

EEOC 2014 Wellness Litigation

- *Orion Energy* – ER allegedly shifted entire premium cost to EE for refusing to participate in wellness program & eventually fired her.
- *Flambeau, Inc.* – ER allegedly cancelled EE's health insurance & shifted entire premium cost to EE when he refused to undergo HRA.
- *Honeywell, Inc.* – ER imposed costs up to \$4000 on EEs who refused biometric screening.

EEOC Proposed ADA Wellness Rules (2015)

- Incentive of up to 30% of total cost of EE-only coverage is voluntary.
- Requires notice.
- **Issues:**
 - *Fair interpretation of “voluntary”?* Average cost: \$1,800/a.
 - *Harmonization w/ACA?*
 - Different statutes can have different standards.
 - Easy enough to comply w/ACA and ADA.
 - This doesn’t really harmonize.



Samuel Bagenstos
Professor of Law
University of Michigan Law School
sambagen@umich.edu
734-647-7584