



UPDATE Employee Benefits and Compensation

June 2013

Employee Wellness Program Regulations Issued

The Departments of Health and Human Services, Labor, and Treasury have issued joint final regulations implementing Affordable Care Act rules regarding group health plan-related employee wellness programs. These rules apply to all group health plans and take effect for plan years beginning on or after January 1, 2014. These regulations have made significant changes to the requirements for wellness programs and may affect any employer currently sponsoring, or planning to implement, a wellness program.

The final regulations divide wellness programs into two categories: participatory and health-contingent. Participatory programs are structured as you might imagine—they do not offer rewards or make rewards contingent upon attaining a health-factor-related standard—and instead provide rewards simply for participating in a wellness program. Examples of participatory programs include a smoking cessation program or an employer contribution towards the cost of a gym membership, provided in each case that there is no penalty or reward associated with the outcome of participating in the program or joining the gym. The only condition the regulations place on participatory programs is that they must be made available to all similarly situated employees, regardless of health status.

The final regulations provide greatly expanded requirements for outcome-based wellness programs. Outcome-based wellness programs condition a reward upon the participant's attainment of a health-factor-related standard. Examples of these programs include reductions in premium amounts for those attaining a certain biometric standard and activity-based programs that provide a financial incentive upon meeting certain benchmarks. To avoid discriminating against employees who may be unable to meet a health-factor-related standard, employers must provide an alternative means for employees to qualify for rewards if they fail to meet the initial standard. One of the more substantial changes made by the regulations is an expansion of what constitutes a "reasonable alternative" and how such alternative must be offered and developed. The final regulations also include the Affordable Care Act's increase in the maximum permissible wellness incentive from 20 percent of the cost of the employee-only coverage to 30 percent and the increase in the incentive for discouraging tobacco use to 50 percent of the cost of employee-only coverage.

TAKE AWAY FOR EMPLOYERS

The final regulations are expansive and compliance is critical for meeting the requirements of the Internal Revenue Code, ERISA, and HIPAA. Employers who are currently offering any type of wellness program, or are considering offering such a program, may want to consider the

structure of such programs given the new regulations and whether any changes are required.

For more information, or if you have any questions about the final regulations implementing employee wellness programs, please contact one of the following attorneys in Robinson & Cole's [Employee Benefits and Compensation Practice Group](#):

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