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Can you force staff to participate in wellness programs?

Your organization, like many, may have embraced a wellness program to help employees quit smoking, lose weight, exercise more or participate in screenings for high blood pressure or cholesterol.

Because wellness programs are a proven way of keeping health care costs under control, you may have even thought about *requiring* employees to participate.

Before long, predict attorneys at employment law firm Littler Mendelson, merely encouraging participation won't be enough to keep health care costs from putting organizations out of business.

A caution: Consult an employment law attorney before moving from a voluntary wellness program to one that's mandatory. It's a controversial practice that is likely to step on laws ranging from the Health Insurance Portability and Accountability Act (HIPAA) to the ADA.

Legal considerations

Indeed, Scotts Miracle-Gro's well-publicized mandatory wellness program already has landed it in court. The firm imposes sanctions—denial of health coverage and even termination—on employees who refuse to participate, and charges employees who refuse to take a health-risk assessment $40 a month extra for premiums.

Scotts forbids employees to smoke—even at home—in states where it's legal for an employer to do so. One employee who says he was fired for smoking has sued the company.

The Littler Mendelson attorneys predict it will be worth it for organizations to figure out how to require participation in wellness programs without breaking the law.

Here are three key questions to ask, even if your organization's wellness program is voluntary:

1. Are any of the activities so intrusive that they infringe on employee rights?

2. How do you protect employee privacy?

3. Do you accommodate disabilities? For instance, if you reward employees who exercise, do you also reward someone who is unable to exercise for performing an alternative health-promoting activity?

If you move toward mandatory participation in your wellness programs, take note: The best general policy is to offer incentives only for participation, not results.

Under HIPAA, it's OK to reward an employee who attends Weight Watchers meetings, for instance, but not to withhold the award unless she loses weight as a result.

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Make incentives equitable

You can get around that rule if your program meets these five criteria:

1. The incentive can't exceed 20% of the cost of employee health coverage.

2. The program is designed for health promotion or disease prevention.

3. Participants must have the opportunity to qualify for the reward at least once a year.

4. All "similarly situated" employees must be eligible. If employees find the activity unreasonably difficult or inadvisable, you must allow them to participate in an acceptable alternative activity.

5. Instructions and literature about the program should make it clear that employees can ask for an alternative exercise.

Example: Employees with a body mass index (BMI) between 19 and 26 don't have to pay the annual deductible for health insurance—an amount less than 20% of the annual cost of employee coverage. They have their BMI checked annually so employees who don't qualify this year have a shot at the award next year. An employee with a medical condition that makes it unreasonably difficult to achieve that BMI—or whose doctor says the effort is ill-advised—still can qualify for the discount by doing something else, such as walking 20 minutes a day three times a week. All plan materials make it clear that this is an option.

Consult an employment law attorney before starting a wellness program—either voluntary or mandatory—that involves incentives.

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