EMPLOYMENT SERVICES ALERT

4/22/15

Equal Employment Opportunity Commission Issues Proposed Regulations on Wellness Programs and the Americans with Disabilities Act

Corporate wellness programs, which typically use financial or other incentives to encourage workers to participate in wellness programs, have surged in popularity over the last several years, spurred on by companies seeking ways to lower healthcare costs. However, these programs can cause legal headaches for employers if not administered properly. The Equal Employment Opportunity Commission (EEOC), likely reacting to what it perceives as improper administration, has issued proposed regulations addressing how the Americans with Disabilities Act (ADA) applies to these wellness program. Two of the hallmarks – goal of the program and voluntariness – are described below.

Any employee health program, including a wellness program, must comply with the ADA, which restricts the medical information that employers may obtain from employees and which makes it illegal to discriminate against an employee based on a disability. The proposed rule requires that any employee health program, must be "reasonably designed" to promote health or prevent disease; indeed, the proposed rule states that "the program must have a reasonable chance of improving the health of, or preventing disease in, participating employees, and must not be overly burdensome, a subterfuge for violating the ADA or other laws prohibiting employment discrimination, or highly suspect in the method chosen to promote health or prevent disease." For instance, an employer who uses the program to identify employees with certain health conditions and to take action based on that knowledge would be violating the ADA.

The wellness plan must be truly voluntary, that is, the employer may not require an employee to participate, may not deny coverage under a group health plan, may not limit the extent of coverage, and may not take any other adverse action against employees who refuse to participate or who do not achieve certain outcomes. While an employer may offer incentives to participate in a wellness program, the total allowable incentive may not exceed 30% of the total cost of employee-only coverage, whether that comes in the form of a reward or a penalty.

The employer must also provide notice explaining what medical information will be obtained, who will receive it, how it will be used, the restrictions on its disclosure, and the methods the employer will use to protect the medical information.

The Notice of Proposed Rulemaking was published in the Federal Registered on April 20, 2015, triggering a sixty-day public comment period. Should you wish to submit a comment, Roetzel would be happy to do so for you. Please contact **Karen Adinolfi** at kadinolfi@ralaw.com or 330.849.6773 with any questions about the comment process or if you wish to submit a comment.