



Seyfarth Shaw LLP

Innovations in Workplace and Community Wellness: Aligning Business Goals With a Health Workforce

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A Changing Landscape: The Interplay Between HIPAA, the ADA, and GINA

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Too Many Cooks Spoil The Broth

- Too many persons involved in managing an activity can ruin it.



White House Press Briefing

December 2, 2014

- White House Press Secretary -- Josh Earnest -- regarding Honeywell:
- “As a general matter . . . the Administration and particularly the White House is concerned that this . . . could be inconsistent with what we know about wellness programs and the fact that we know that wellness programs are good for both employers and employees.”



ADA

- A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the work site. 42 USC § 12112(d)(4)(B)

EEOC

- Based on the language of the ADA, employee health programs that include . . . inquiries or medical examinations that are part of a HRA or medical history must be voluntary and clarifies the application of that rule in light of the amendments to HIPPA by the ACA. 80 Fed. Reg. 21,663



Reasonable Design Standard and Incentives

- Tri-Agency -- ACA -- HIPPA: Health contingent wellness program must be reasonably designed.
- EEOC -- All wellness programs: Health contingent or participatory must be reasonably designed to promote health or prevent disease.
- Incentives:
 - HIPPA: 30% of plan premium including family
 - EEOC-ADA: 30% of single plan coverage
 - EEOC-GINA: 30% of employee and spouse -- weighted allocation of incentive



Safe Harbor -- Oh Well!!

EEOC

- The Commission does not believe that the ADA's "Safe Harbor" provision applicable to insurance, as interpreted by the Court in *Seff v. Broward County* is the proper basis for finding wellness program incentives permissible.
- "I am not persuaded by plaintiff's argument that the safe harbor cannot be construed as applying to wellness programs, regardless whether the wellness program is part of an employer's insurance benefit plan. The fact that wellness programs may fall within the scope of the exception set forth in § 12112(d)(4)(B) does not mean that they cannot also be protected by § 12201(c)(2)'s safe harbor." *EEOC v Flambeau*



GINA And Wellness

- 30% threshold from ACA: not coercive; change from ADA
- No safe harbor under GINA
- Reasonable design requirement in regulations
- Incentives okay when spouse in plan; not okay for dependents or spouse not in plan
- Incentives overweight family coverage