

Health Promotion Program Legal Updates

Webinar Q&A: May 15, 2019

The following questions were submitted during WELCOA's *Health Promotion Program Legal Updates* webinar session that aired on **May 15, 2019**. To help further educate yourself in legal compliance with your wellness program, please review this list of attendee inquiries and the responses provided by presenter and health law attorney, Barbara Zabawa.

****Please note: The responses provided below do NOT constitute legal advice and should not be used as such. Readers should retain legal counsel to obtain definitive answers. The responses below are for educational purposes only.**

1. Is there any risk with providing education to employees through flyers or articles in newsletters from a non-licensed person?

Education is usually fine. It is when wellness professionals give individualized advice to employees that there may be scope of practice or "medical care" issues as discussed in the webinar.

2. If the wellness program is only offered to those enrolled on the medical plan and offers medical care, do the premium differentials need to be offered to the COBRA members or just the wellness program opportunities?

No. By definition, COBRA allows employers to require employees eligible for COBRA to pay up to 102% of the premium. So, COBRA enrollees will not benefit from wellness premium differentials, but should benefit from any other cost-sharing incentives from a wellness program.

3. What does the structure/relationship typically look like for non-clinical employers that have onsite health clinics?

Usually those employers have a separate legal entity (usually a professional medical corporation) that employs the physicians.

4. Does it look like we'll have an EEOC update in June or July this year?

According to the EEOC notice from last October, the EEOC plans to issue proposed rules on the ADA and GINA incentive rules in June 2019.

5. If a wellness program offers a stepping challenge to employees and spouses, would it be best to NOT set a "goal" of daily steps, or would it be okay to set daily goals?

That depends on the individual. In previous webinars we discussed that it might be a good idea to administer the PAR-Q+ or some similar pre-activity survey to ensure that participants are able to physically meet the challenge.

6. I am struggling with how the industry is safeguarding services provided by "health coaches" vs. dietitians. So many health coaches now work 1:1 with individuals inclusive of a nutrition experience tailored to the individual?

If the coach has a dietitian license or the state equivalent, then giving tailored advice probably won't violate the state's scope of practice laws. If the coach is not licensed, then he or she must be careful to not violate the state's scope of practice laws. One way to reduce risk is to focus on general education and information about nutrition.

7. In general, how do people find state specific laws?

Your state's legislature should have links to the state statutes and administrative rules. I suggest starting there.



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