

Health Promotion Program Legal Updates

Webinar Q&A: November 20, 2019

The following questions were submitted during WELCOA's *Health Promotion Program Legal Updates* webinar session that aired on **November 20, 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. Any suggestions for specifics to look for when choosing an HRA that isn't biased?

Forms without appropriate gender options can contribute to creating environments where LGB, Transgender and Non-Binary people do not feel welcome. The first step in creating a program where all individuals feel included is being informed about how your wellness vendor addresses gender and biological sex in their health questionnaire. Check to see if they have incorporated expanded gender options (Female, Male, Non-binary/third gender, Prefer to self-describe, Prefer not to say) and inquire about how the algorithm for health recommendations based on biological sex are set up.

2. Do you have any best practices/advice on starting workplace affinity groups?

I do not have a lot of experience starting workplace affinity groups. However, it has been my experience that interest in starting workplace affinity groups is growing. My advice would be to start by determining the level of interest in affinity groups and identifying work with employees to identify how you, as an employer, can make it easy for individuals in the different affinity groups to connect on shared interest and experiences.

3. In terms of actual violations of regulations regarding protected classes, etc., is it tied to outcomes vs voluntary programs? We definitely should apply the inclusive filter to everything, but in terms of employers facing legal consequences is it tied only to outcomes-based programs?

Under the ADA, all wellness programs that collect health information must be voluntary. So, even outcomes-based programs that are collecting health information should be voluntary to meet ADA requirements. Outcomes-based programs may be more at risk of violating civil rights laws, but not necessarily. Participatory programs, such as administering an HRA that asks sensitive questions (like, are you pregnant?), may also trigger civil rights violations, and privacy law issues as well. Activity-based programs like physical activity programs can also trigger civil rights violations if more protected classes are unable to exercise compared to other groups.



Q&A responses provided by
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