

Health Promotion Program Legal Updates

Webinar Q&A: March 9, 2022

The following questions were submitted during WELCOA's *Health Promotion Program Legal Updates* webinar session that aired on **March 9, 2022**. 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. Where can we find state statutes on the stress-based injuries?

State statutes that address worker injuries can be found in the state's worker's compensation statutes and regulations. Where those laws are located exactly will vary by state, but usually can be searched for on the state's legislature web page.

2. What is the maximum group size for the free health and wellness consultation services?

It is not clear from the OSHA website explaining the program. See <https://www.osha.gov/consultation>. The brochure states it is available to small and medium-sized businesses in the US, with priority given to high-hazard worksites. The onsite consultations are conducted by states, even though the program itself is housed under OSHA. See https://uwmadison.co1.qualtrics.com/jfe/form/SV_7Ve5TnNn29wS6pf?Q_JFE=qdg. If interested, you should contact the program and find out if your organization is eligible.

3. How would you recommend an employer go about inquiring about the possible disabilities?

I suggest using the GAD-7 for anxiety and the PHQ-2 for depression-related questions and put them as part of your voluntary wellness program.

4. I think the question about disabilities came in when speaking about the pharmacist. She had not shared her disability, so how would an employer breach that subject when addressing her complaints about noise and temperature?

See response to question #3.

5. Do you have any comments on the Yale class-action lawsuit that was just settled?

Yes. The lawsuit settled as of 3/4/22. If the court approves the settlement agreement, Yale will pay the plaintiffs and their attorneys \$1.29 million plus suspend a number of the practices related to its workplace wellness program. Specifically, Yale will: "[S]top the collection of HEP [wellness program] fees during the duration of the proposed Settlement. Yale will also direct Healthmine, one of its business associates, not to send data to TrestleTree for the purpose of health coaching referrals. Yale will direct TrestleTree to purge all data relating to completed prior health coaching engagements from its records.⁵ For those individuals who are actively engaged in health coaching currently, TrestleTree will notify individuals in advance and give them the option to have their records retained (or purged) and continue coaching (or not) as they desire, with no penalty for refusal."



Q&A responses provided by
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