

Health Promotion Program Legal Updates

Webinar Q&A: June 8, 2022

The following questions were submitted during WELCOA's *Health Promotion Program Legal Updates* webinar session that aired on **June 8, 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. Are there data that identify whose perspective is accurate - the employer or the employee in terms of the how well the wellness program is performing?

If you are interested in avoiding complaints and lawsuits being filed, then you need to pay attention to the employee perspective.

2. What about if your organization requires a HRA for health insurance premium discount?

Requiring an HRA for a premium discount is the very problem we discussed in today's webinar. You can't "require" an HRA and still consider it "voluntary."

3. What if a third-party collected the data and doesn't share the data with the employer or the employer's insurance company?

HIPAA has requirements that must be met when collecting and sharing PHI from a group health plan.

4. I have clients use the term HRA as a gateway that opens up participation in other activities, which earn incentives. Is "gateway" an okay term? I mean, it means the same thing...it is required.

A "gateway" is just an indirect way of tying incentives to answering personal health questions on an HRA. From a legal perspective, I don't think it matters.

5. Is there a different incentive calculation amount for HIPAA vs ADA?

Yes. The ADA has no incentive calculation. HIPAA's incentive is up to 30% of the total cost of coverage for health contingent programs.

6. Could it be that executives are more interested in the program structure and metrics because they have been held responsible for those things? Wellness professionals are being told to collect and analyze data constantly and it seems like it is the only way to show our worth. However, I think that might apply to almost all fields.

Yes, see my blog post at <https://wellnesslaw.com/are-workplace-wellness-programs-required-for-employers/>.

7. Do companies that provide health insurance to their employees have the legal right to ask for a health screening annually to save on their health insurance?

Possibly. See <https://wellnesslaw.com/are-workplace-wellness-programs-required-for-employers/>.

8. When evaluating size of incentive, is it compared to the cost of the insurance plan, or is it compared to what the employee is charged for to have the coverage?

The total cost for both employers and employees.



Q&A responses provided by
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9. **So, is it just that we need to be careful about using “voluntary” and “required” in the same program? Or is this really indicating that employers cannot and should not offer ANY incentives for completing specific items (especially data collection tasks)?**

The higher the incentive, the less “voluntary” an HRA will seem.

10. **Any difference if we are self-insured and have access to our own employees’ health information? We are a healthcare system.**

Self-insured group health plans wear two hats: 1) as employer and plan sponsor; 2) as the group health plan. The group health plan must follow HIPAA when it comes to enrollee health information.

11. **Follow-up question on data collection - our third-party vendor has a HRA available on their website for our employees to utilize, but the employer never sees that data. Also, our third-party vendor gives rewards points to employees for getting a physical, but again the employer never sees that data. The employer only has the option to see that employees have completed these activities, but never sees any medical information. In this regard, is this exempt from being considered data collection in a voluntary wellness program?**

Who sees the data does not affect whether the ADA voluntary requirement is implicated.



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