



# legislativeUPDATE

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## Wellness Programs – Compliance Challenges and Future Enforcement

Designing compliant wellness programs, that both encourage healthy employee lifestyles and comply with various laws, continues to be a challenge for employers looking for ways to cultivate a healthy workforce and potentially reduce the rising cost of healthcare. With a constant flow of new and sometimes conflicting regulations, employers and plan sponsors continue to grapple with how to align their wellness programs with the requirements of the Health Insurance Portability and Accountability Act (HIPAA), the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA). These laws each have their own set of legal rules for acceptable wellness program design, which are not always consistent with one another. In addition, state laws and other federal laws may also apply.

Both the ADA and GINA require that certain wellness programs are “voluntary”, with different rules under each law as to how a plan must meet this standard. Both laws, however, allow companies to ask some health related questions and conduct certain medical exams, such as biometric screenings, as part of a voluntary wellness program. The Equal Employment Opportunity Commission (EEOC) recently issued final rules on these standards that went into effect in January 2017 and added further compliance complexity to an area that is already heavily regulated. To assist with understanding the implications of the EEOC’s final rules related to the ADA, GINA and wellness programs, Conner Strong & Buckelew published an Update: [New EEOC Rules - Implications for Wellness Programs.](#)

The EEOC continues to work with stakeholders to clarify its interpretation of the wellness program rules. See EEOC [webcast](#) on the new rules. Additionally, case law in the wellness area continues and given the lack of consistency in recent court decisions, continued litigation is likely which could impact wellness program design and strategy. It remains to be seen if the EEOC will be taking a different approach to litigation and enforcement under the Trump administration compared to that of the prior administration. The new regulations are now final, so any significant changes to the wellness rules will almost certainly require changes to regulations or the law itself which can take months, if not over a year. For now, plan sponsors should continue to monitor this situation pending further developments, which we believe should be forthcoming.

Employers and plan sponsors are encouraged to seek counsel of trusted advisors when planning and implementing their wellness programs and have any wellness incentive plans and related participation requirements examined by counsel to ensure appropriate adherence to the laws and regulations. We will continue to provide alerts and updates for employers and plan sponsors as

new information is issued on these important topics. In the meantime, should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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