

# *THE GLOBALFIT WORKSITE WELLNESS SUMMIT*

## Legal Implications of Corporate Wellness Programs

**May 9, 2009**

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# Laws Impacting Corporate Wellness Programs

- HIPAA
- ADA
- ADEA
- State Laws



# Corporate Wellness Activities

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- Health Assessment Tests
- Behavior Modification Programs
- Disease Management Programs
  - Participation
  - Incentives
  - Penalties

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“The First Thing We do, Let’s Kill All the  
Lawyers”

Shakespeare  
Henry VI



*Shakespeare*

# HIPAA

- HIPAA – Prohibits discrimination in health care coverage based on health factors

# HIPAA – Non-Discrimination Rules

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- General Rule: Wellness programs which require satisfaction of health-related factor must meet five point non-discrimination test

# HIPAA – Non-Discrimination Rules

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- A. Program discount may not exceed 20% of cost of employee coverage under employer's health plan

# HIPAA – Non-Discrimination Rules

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- B.** Program must be reasonably designed to promote health or prevent disease

## HIPAA – Non-Discrimination Rules

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- C. Program must provide eligible individuals with opportunity to qualify for the discount at least once per year

## HIPAA – Non-Discrimination Rules

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- D. Program must offer reasonable alternative standards to individuals for whom it is medically inadvisable or unreasonable difficult to obtain the stated goal

## HIPAA – Non-Discrimination Rules

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- E. Program sponsor must publicize the availability of alternative standards in all program materials that describe the terms of the program

# HIPAA – Non-Discrimination Rules

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- **Exception to Non-Discrimination Rules** – Wellness Programs that reward participation if they are made available to all similarly situated individuals

# The Americans With Disabilities Act (ADA)

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- Prohibits employment-based discrimination against qualified individuals with a disability

# ADA

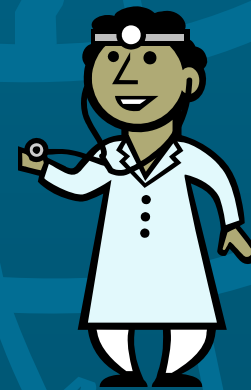
- To ensure compliance with ADA, Wellness Program must:
  - Assure that participation in the program is voluntary;
  - Ensure that information gathered in conjunction with the program is retained using ADA confidentiality measures; and
  - Be implemented in a way that information gathered is not used to discriminate against employees

# ADA

- What is voluntary?
  - EEOC: Wellness Program that is structured in a way that employees are neither required to participate nor be penalized for choosing not to participate

# ADA

- Medical inquiries
  - The line between permissible and impermissible medical inquiries



# ADA

- Reasonable accommodation obligation
  - Does HIPAA-required offering of alternative method of participating in Wellness Program constitute interactive process requirement under ADA

## Age Discrimination in Employment Act (ADEA)

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- Prohibits discrimination against applicants and employees on the basis of “compensation, terms, conditions or privileges of employment because of such individual’s age”

Disparate Treatment v. Disparate Impact  
Claims

# ADEA

- Can otherwise bona fide Wellness Program that provides for a premium discount for achieving a certain goal, e.g., bone density or cholesterol level, which is harder to achieve for older workers, be challenged as having a disparate impact?

# State Lifestyle Discrimination Laws

- Many states have laws that prohibit discrimination against an individual who engages in lawful activities away from the employer's premises
  - Smokers
  - Overweight workers
- Refusal to participate in Wellness Program – could loss of “incentive” violate state law?

# SUMMARY

“Much Ado About *Much*”



*Prepared  
for*



*By*

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