

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION - RIN number 3046-AB01

Comment to the Equal Employment Opportunity Commission (EEOC) regarding a proposed rule that would amend the regulations and interpretive guidance implementing Title I of the Americans with Disabilities Act (ADA) as they relate to employer wellness programs.

Thank you for the opportunity to submit comments regarding the proposed rule published on April 20, 2015 regarding how Title I of the American with Disabilities Act (ADA) applies to employer wellness programs.

NAAFA objects to the promotion of weight loss as a means to “improved health”. The issue with the definition of an employee health program under Section 1630.14(d)(1) is in the program design having “a reasonable chance of improving the health of, or preventing disease in, participating employees.” Will the program be required to prove efficacy? If the weight loss programs were a prescription, would you prescribe anything that is known to have an 88% failure rate?

In the 2013 study, *Long-term effects of dieting: Is Weight Loss Related to Health?*, researchers uncovered no clear relationship between weight loss and health outcomes, calling into question whether weight change per se had any causal role in the few effects of the diets.

The 2014 article, *The Weight-Inclusive versus Weight-Normative Approach to Health: Evaluating the Evidence for Prioritizing Well-Being over Weight Loss*, revealed that the weight normative approach (emphasis on weight and weight loss when defining health and well-being) is not effective for most people because of high rates of weight regain and cycling from weight loss interventions, which are linked to adverse health and well-being. In contrast, data support a weight-inclusive approach, which is included in models such as Health at Every Size for improving physical (e.g., blood pressure), behavioral (e.g., binge eating), and psychological (e.g., depression) indices, as well as acceptability of public health messages.

With regard to Section 1630.14(d)(2), are programs that DO NOT include disability-related inquiries or medical examinations exempt from the voluntary requirement? If so, weight loss classes as outlined in Section 1630.14(d)(3) would have the potential of becoming compulsory if the employer so chooses and would be punitive in nature.

In the case of weight loss programs that may be recommended or required for people that are considered outside the medical definition of "healthy weight," is a reduction in weight required in order to achieve the reward? If it is required, that then becomes punitive for those that are unable to reduce their body weight.

If a weight loss class includes measurement of an individual’s weight, is that considered a “medical examination”? If it is considered a medical exam, then the program MUST be voluntary under Section 1630.14(d)(2), CANNOT be included in Section 1630.14(d)(3):

Limitations on Incentives, MUST be considered part of their Personal Health Information (PHI) and is protected under HIPAA.

NAAFA agrees that “Where such incentives would render a plan unaffordable for an individual, it would be deemed coercive and involuntary to require that individual to answer disability-related inquiries and/or submit to medical examinations connected with the wellness program at issue.” The EEOC needs to guarantee that ALL wellness programs are voluntary and there will be no adverse employment action, retaliation against, interference with, coercion, intimidation, or threatening of employees for not participating.

NAAFA believes that participation in wellness programs must not render the cost of health insurance unaffordable to employees. According to a 2002 study, obese workers overall suffered a wage penalty in the range of 1.4% to 4.5% for doing the same work as their thinner counterparts. The penalty for obese women ranged from 2.3% to 6.2% vs. a range of 0.7% to 2.6% for men. Increasing the employee’s portion of health insurance places an undue burden on employees that are already being paid less than their thinner coworkers.

The 2013 study, *Wellness Incentives In The Workplace: Cost Savings Through Cost Shifting To Unhealthy Workers*, states “Recognizing the risk that unhealthy employees might be punished rather than helped by such programs, the [Affordable Care] act also forbids health-based discrimination.” Additionally, it finds: “Although there may be other valid reasons, beyond lowering costs, to institute workplace wellness programs, we found little evidence that such programs can easily save costs through health improvement without being discriminatory. Our evidence suggests that savings to employers may come from cost shifting, with the most vulnerable employees—those from lower socioeconomic strata with the most health risks—probably bearing greater costs that in effect subsidize their healthier colleagues.”

NAAFA supports the evidence-based principles of Health at Every Size (HAES) in working to improve the physical, emotional and mental health of all employees. These principles are aligned with our missions. Instead of focusing on weight as a measurement of health, the HAES approach removes weight from the equation and replaces it with a focus on overall well-being, which includes the full range of body shapes and sizes. For information on HAES principles, go to <https://www.sizediversityandhealth.org/content.asp?id=152>.

Respectfully submitted:

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