

Compliance Requirements for Wellness Rewards Programs

Workplace wellness programs are popular and effective tools to encourage healthy behavior and inspire improvements in overall employee health. Because of the complicated intersection of employee-employer relations and private medical information, several different laws and administrative agencies regulate aspects of workplace wellness programs. The intent of these regulations is to ensure employees are treated in a non-discriminatory manner by their employers; to prohibit employers from accessing and/or misusing employees' private medical information; and to ensure the structure of these programs allow employees equal opportunity to participate regardless of their health status.

At a high level, the current regulatory requirements for workplace wellness programs include:

✓ Reasonably Designed to Promote Health

- ▶ Cannot be overly burdensome for participants
- ▶ Participants cannot be required to complete activities predicated on their health status to be granted benefits or provided a more advantageous plan design
- ▶ Rewards offered must be equitable across population; i.e. everyone has same opportunity to earn rewards
- ▶ Prohibited from offering rewards in return for genetic information, e.g., family medical history collected in a health assessment

✓ Alternatives for Those Unable to Participate

- ▶ Program must include alternative ways for individuals to participate in and/or earn rewards for all eligible activities regardless of classification
- ▶ Must be able to be completed within a reasonable amount of time to ensure participants can earn reward within defined program period

✓ Communications and Data Gathering

- ▶ May not collect health information without providing guidance to participants on how their information will be used
 - Program materials and websites must include a notification describing how information provided by participants will be used
- ▶ Program materials and websites must include rewards offering details and general awareness of alternatives being available if needed
- ▶ Plan sponsors may only receive identifiable health information as necessary to administer the plan; otherwise, plan sponsor should receive only aggregate data

✓ Incentives Cap

- ▶ Wellness rewards for all incentives other than smoking cessation may not exceed 30% of individual only plan coverage of combined employer and member premiums
 - Must include all cash and non-cash reward amounts for all rewards activities
- ▶ Smoking cessation incentives may not exceed 50%, as long as program does not require medical screening results for tobacco. If test is required, subject to 30% cap.

✓ Taxability

- ▶ Taxable: cash and cash equivalents (pre-paid cards; gift cards; merchandise)
- ▶ Non-taxable: premium reductions, contributions to HSA/HRA/FSA, charitable contributions, deductible credits/waivers; de minimis rewards; other rewards (e.g., access to gym or weight loss programs on premises)

Note: Large ticket items such as iPads are never considered de minimis. Reimbursements of gym and/or weight loss program memberships are taxable.

The existence and type of program alternatives and the specifics on available rewards and incentives are program design elements. We recommend working with Welltok's program design team to address these elements during the program design and implementation phases. Please contact your Welltok representative to get more information on how to address potential compliance issues with your wellness programs.