

Question	Answer
Q: Would gift cards as a wellness incentive be taxable? Are there other nontaxable incentives that could be given?	A: Any incentive, other than a health plan related incentive, (i.e. a plan contribution credit or a waiver of a portion of the deductible for example) is taxable unless it is considered "de minimis" according to IRS guidelines. In general an employer should consider almost any cash incentive or gift card as taxable income. The IRS definition of de minimis is very narrow. Code §132(e) defines de minimis as "any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable."
Q: If we had a voluntary participation in a steps program. At the end of 12 weeks the "winner" got a \$100 gift card. Is that income to the winner and taxable	
Q: Is the employer required to put any \$ given as a reward for wellness on W-2 form?	The IRS does not use a specific dollar amount as the threshold, determination is made on the basis of other factors: <ul style="list-style-type: none">• First the IRS would consider the total value of the items• Next, the IRS considers the frequency with which the items were provided• The IRS will also consider if the cost of tracking distribution on an employee-by-employee basis would exceed the nominal tax revenue generated, or whether the cost of accounting for the benefit might be greater than the cost of the benefit.
Q: Would the fitness center membership reimbursement be taxable to the employee for whom it's paid?	
Q: Affordability rule & tobacco related rates...any exceptions for Self Insured plans?	A: No - the impact of a wellness program on determination of plan affordability is the same for self-funded and fully insured plans
Q: Are Wellness Programs mandatory?	A: No - The ACA does not require employers to offer wellness programs.
Q: Is it legal to charge more for monthly premiums for tobacco users? We incentivize them to lower their rate to normal by participating in a smoking cessation program.	A: Yes a premium differential of up to 50% is allowed for tobacco related wellness programs as long as these programs comply with all of the HIPAA requirements of a bona fide wellness program.
Q: Can you give a reduction in a premium for achieving a "total score" on a HRA vs. rewarding for individual test, like total cholesterol, good blood pressure? Is having yearly HRA's considered a "program"?	A: Yes wellness programs are often designed where incentives are tied to meeting a number of different requirements to obtaining a certain wellness score based on various elements of the program. Asking employees to complete an annual health risk assessment is a form of a wellness program, but if it is voluntary then it would be considered a participatory only program and the rules related to health contingent wellness programs would not apply.

Q: The employer/employee monthly premium is \$1000 a month (employee pays \$200.00 a month). There is an incentive if the employee maintains or improves a health status (30%) and additional (20%) if they are a non-smoker. Can you run through the numbers of how that would look based on the current contribution strategy.

Q: What if the employer offers to pay the 1st \$12.50 of the monthly health club premium, but only if the EE is a .5 FTE or above?

Q: Do HRA contributions for wellness have to be applied to HIPAA Maximum incentives?

Q: Do we have to offer the Wellness Program to participants in our Retiree Health Plan?

Q: Do wellness benefits need to be offered to COBRA participants?

Q: Is it permissible to have different levels of rewards for outcome-based, activity-based alternative, etc. Or, does the reward have to be equivalent?

Q: Is there a model notice published that can be used as a guidance for the Notice of Availability of Reasonable Alternative Standard?

Q: Our company pays 100% premium cost for all full-time employees and their legal dependents. Will we be allowed to say we'll "pay 100% of medical premium cost based on cost for non-smokers" if the premiums for smokers and non-smokers differ? Thus, those employees who choose to smoke will have to pay the difference if any

Beginning with plan years in 2014 a wellness program may have a plan cost incentive up to 30% of the premium for health contingent programs and 50% for tobacco related wellness programs. However combined health contingent and tobacco programs cannot have an incentive that exceed 50% of the premium. In this case if the employer charges employees who participate in both programs \$200 per month to participate in the plan, here are examples of various compliance contribution structures

* Charge employees up to an additional \$300/mo. (30% of the premium) if they fail to meet the conditions of a health contingent wellness program (Total employee contribution of \$500/mo.)

* Charge employees up to an additional \$500/mo. (50% of the premium) if they fail to meet the conditions of a tobacco related incentive program (Total employee contribution of \$700/mo.)

* Charge employees up to an additional \$500/mo. (50% of the premium) if they fail to meet the conditions of a combined health contingent and tobacco related incentive program (Total employee contribution of \$700/mo.) as long as the portion of the combined program related to health contingent factors does not exceed 30% of the premium.

A: Simply paying for a health club membership is a participatory program and since it does not impact the cost for the employee to participate in the employer's health plans it would not be subject to health plan non-discrimination rules.

A: Yes contributions to an HRA for participation in health contingent wellness programs would count toward the maximum allowed incentive.

A: No - there is no specific requirement that an employer must offer the same wellness program to retirees that is offered to active employees.

A: No - there is no specific requirement that an employer must offer a wellness program to COBRA QBs (who are not also active employees) that is offered to active employees. .

A: Rewards can vary for different elements of a wellness program as long as health plan related rewards for health contingent portions of the wellness program do not exceed the limits imposed by the HIPAA wellness rules.

A: Model language was released by the regulatory agencies in conjunction with the final regulations that employers can use for this purpose:

"Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status."

A: Yes this would be allowed as long as the additional amount charged to smokers does not exceed 50% of the total applicable plan premium and the other requirements of a health contingent wellness program are met.

Q: Smoking cessation is excluded from our plan. So, we can't offer incentives for this either way?

Q: Some employers set up a dummy company and roll high risk/expense employees into that company and offer them a different benefit design than the parent or former company offers. Is this a loop hole or a form of discrimination.

Q: Will 5500s have to be filed for these programs? Are Wellness Programs a COBRA benefit?

A: Smoking cessation programs do not need to be a covered benefit under a plan for an employer to create a tobacco related wellness incentive. If an employer offers a smoking cessation program as an alternative to certifying that an employee is tobacco free then the employer would need to pay the cost of the smoking cessation program for some who request an alternative method for earning the incentive.. However, this could be done outside the health plan benefits

A: Health plan non-discrimination rules consider all entities under common control based on IRS Code §414 rules. Under these rules separate companies may need to be treated as a single company for non-discrimination rule purposes, depending on ownership structure and other factors. Any employer attempting to treat related companies as separate entities should seek legal or consulting advice on the details of the §414 rules.

A: Employers must also determine when their Wellness Program may be an ERISA Plan. The DOL has informally expressed the view that the framework provided in DOL Advisory Opinions addressing employee assistance programs (EAPs) would be appropriate in determining whether a particular wellness program is an ERISA plan. The DOL guidance for EAPs makes it clear that if the plan provides or pays for medical care the plan should be considered a health plan.

Wellness programs often go beyond the mere promotion of good health to provide medical care including physical examinations, cholesterol screening, flu shots, nutrition counseling, and similar benefits. It would be hard to argue that this type of plan is not subject to ERISA. To the extent that a wellness program is subject to ERISA it would be subject to ERISA rules such as 5500 filing, COBRA, HIPAA Privacy and SPD requirements. Essentially it would need to be treated by the employer as just another health plan offering with all of the requirements that go with that distinction.

Q: Can an employee's "outcomes-based" incentive be contingent upon a spouse also meeting the outcomes based measure? meaning, if the spouse doesn't qualify,
Q: Could an employer require a spouse and employee to sign the same tobacco affidavit saying they are non-smokers or do those have to be separate?

A: Yes employers are allowed to create wellness incentives that are contingent on a spouse's participation in wellness programs.

A: The regulations do not specify the exact method an employer should use if they choose to have employees and/or spouses certify compliance with a non-smoking policy.

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