

HR Brief

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December 2015

EEOC Proposes Rule on GINA's Impact on Wellness Programs

On Oct. 30, 2015, the U.S. Equal Employment Opportunity Commission (EEOC) issued a [proposed rule](#) to amend the regulations implementing Title II of the Genetic Information Nondiscrimination Act (GINA) as they relate to employer wellness programs that are part of group health plans.

GINA protects individuals from employment discrimination based on their genetic information. In general, covered employers (those with 15 or more employees) are prohibited from using genetic information for employment decisions and are restricted in their ability to disclose or request genetic information.

Since information about the current or past health status of an employee's spouse or other family member is considered genetic information about the employee, the EEOC's current GINA regulations could be read as prohibiting employers from offering incentives under a wellness program in return for a spouse

providing his or her current or past health information. The proposed rule explains how employers may lawfully offer incentives for this information under GINA.

The proposed rule would allow an employer to offer limited incentives for an employee's spouse to provide current or past health status information as part of a wellness program, in situations where the spouse participates in the employer's health plan. Under the proposed rule, an employer may offer, as part of its health plan, a limited incentive (in the form of a reward or penalty) to an employee whose spouse is covered under the employee's health plan, receives health or genetic services offered by the employer (including as part of a wellness program), and provides information about his or her current or past health status.

Information about current or past health status is usually provided as part of a health risk assessment (HRA), which may include a questionnaire or medical examination. However, no inducement may be offered in return for the spouse providing his or her own genetic information, including results of his or her genetic tests.

The proposed exception applies to information on the current and past health status of spouses, but **not of children**.

To help employers understand the proposed requirements, the EEOC has provided a set of [questions and answers](#) about the proposed rule.

The EEOC will accept comments on the proposed rule through Dec. 29, 2015. The EEOC will evaluate the comments it receives and possibly make revisions to the

DID YOU KNOW?

According to the Fantasy Sports Trade Association (FSTA), approximately 37.5 million full-time employees participate in fantasy sports. It is estimated that the average player spends up to nine hours per week researching fantasy sports and three hours per week managing a team. Undoubtedly, a few of these hours overlap with work hours.

There is good reason to be concerned about lost productivity due to fantasy sports in the workplace. According to outplacement consultancy Challenger, Gray & Christmas, each NFL season costs

IRS Clarifies Federal Tax Regulations for Same-sex Spouses

On Oct. 21, 2015, the U.S. Department of Treasury and the IRS released [proposed regulations](#) implementing the Supreme Court's same-sex marriage decisions for federal tax purposes.

The proposed regulations confirm for employers that employees in same-sex marriages should be treated the same as employees in opposite-sex marriages for purposes of federal tax laws, including rules for employee benefit plans.

The proposed regulations will become effective when they are published in final form. Until then, employers may continue to rely on the guidance the IRS issued following the Supreme Court's DOMA ruling, including [Revenue Ruling 2013-17](#).

The proposed regulations do **not** treat registered domestic partnerships, civil unions or similar relationships that are not designated as marriage under state law as marriage for federal tax purposes.

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