

The Legal Ramifications Associated with Forced Wellness Programs

In-House News:

The Legal Ramifications Associated with Forced Wellness Programs

By Anique Gonzalez

Over the past several years wellness programs have found their way into various companies across the United States. Such programs, geared toward getting employees healthy in order to cut insurance costs, are known to reward employees for participating and sanction them for refusing to do so. This new corporate attitude has generated concern about employers' roles in their employees' personal lives and is predicted to result in future discrimination and privacy lawsuits.

According to some estimates, corporations' healthcare costs are expected to double by the year 2016. And considering that the obesity epidemic alone is currently costing employers \$12 billion annually, a twofold increase in overall healthcare costs will drastically impact companies' bottom lines. This may be one reason that companies are more willing to face



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the possible legal challenges associated with wellness programs.

Mandatory wellness programs vary from company to company but can range from cholesterol screenings to employee-specific weight-loss plans to nicotine policies. For example, Scotts Miracle-Gro Co. bans employees from smoking, regardless of whether it is done on company or personal time. Cadmus Community Corp., located in Richmond, Virginia, requires employees and their spouses to submit to health-risk assessments in order to obtain health insurance. Iowa-based Principal Financial Group Inc. has a similar policy program whereby workers must undergo health exams that track things like weight, blood pressure, and use of tobacco to qualify for coverage. Compelling employees to provide such personal information raises the question "Do these requirements violate their rights?"

In some instances the answer is "yes." In 2006 the city of Taylor, Michigan, was brought to federal court after implementing a mandatory wellness program that forced the city's firefighters to participate in blood screenings that would detect cholesterol levels. At the time the plaintiffs argued that the program violated their constitutional rights. After the city's motion for summary judgment was denied, Taylor discontinued the program.

Another recent Massachusetts case has also placed these programs at the center of legal debates. In *Rodrigues v. The Scotts Co.* a former Scotts Miracle-Gro Co. employee is suing the aforementioned company because it terminated his employment when he tested positive for nicotine, violating the company's ban. The case is ongoing.

Despite some of the lawsuits that have resulted from such programs, many

companies are continuing with their plans to make their employees healthy. However, the situation is becoming even more precarious in light of new laws that aim to protect employees from the scrutiny associated with the programs. For example, the Health Insurance Portability and Accountability Act forbids companies from charging employees different rates based solely on health, and the Americans with Disabilities Act forbids employers from asking questions relating to employees' health.

So, are any of these programs legal? Yes; there are differences between wellness programs that are considered legally safe and those that are not. Typically, programs that are tied to either stress reduction or behaviors that can be directly tied to an employee's productivity at work will have little or no legal repercussions. On the other hand, companies that punish or target employees who are genetically predisposed to certain diseases — diabetes, for instance — will increasingly find themselves in court.

On the Net:

Americans with Disabilities Act

www.usdoj.gov/crt/ada/adahom1.htm

Health Insurance Portability and Accountability Act

www.hhs.gov/ocr/hipaa

Scotts Miracle-Gro Co.

www.scotts.com

