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WORKSITE WELLNESS AND THE AMERICANS WITH DISABILITIES ACT MEDICAL INFORMATION

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MINNESOTA EMPLOYERS who establish worksite wellness programs must comply with certain legal requirements. Important legal issues to consider are the HIPAA nondiscrimination regulations, the HIPAA Privacy Rule, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), the Minnesota Consumable Products Act, federal and state nursing mothers laws and federal income tax law. Please refer to the corresponding fact sheet for a description of each legal requirement. This fact sheet provides an overview of the ADA's regulation of medical information as it applies to worksite wellness programs. When setting up a worksite wellness program, it is important to consult with an attorney to make sure that the program meets all legal requirements.

Q What does the ADA do?

A The ADA prohibits employers with 15 or more employees from discriminating against applicants and employees on the basis of disability.[1]

"An employer's request that employees complete a health risk assessment must comply with these requirements."

Q How does the ADA apply to worksite wellness programs?

A The ADA applies to worksite wellness programs in two ways:

» It prohibits employers from discriminating on the basis of disability in employment. That issue is addressed in a separate fact sheet, *Worksite Wellness and the ADA Reasonable Accommodation*.

» It restricts requests for medical information. This fact sheet discusses how, when and under what circumstances an employer may ask if an applicant or employee has a disability and when the employer can require a medical examination. An employer's request that employees complete a health risk assessment (HRA) must comply with these requirements.

Q What must a worksite wellness program do to comply with the ADA's regulation of medical information?

A The employer may only request or require a medical exam, including an HRA, as follows:

» Before making an employment offer, an employer may not request that an applicant take a medical exam, including an HRA, or ask whether the applicant has a disability, unless the request relates to the applicant's ability to perform the job.

» After an employer makes a conditional offer, but before employment has begun, the employer may require the applicant to take a medical exam, including completing an HRA, as long as all new employees in similar jobs are required to take the exam regardless of disability.

» After employment has begun, an employer may require medical exams or make disability-related inquiries only if they are job-related and necessary to the operation of the business. An employer may offer a voluntary medical exam, including an HRA, as part of an employee health program.

Q How is an employer required to treat medical information?

A Medical information, including an HRA or a request for a reasonable accommodation, must be treated as a confidential medical record and kept separate from the employee's personnel file.

Q Are there any Minnesota laws that prohibit discrimination on the basis of disability?

A The Minnesota Human Rights Act also prohibits discrimination on the basis of disability.[2] It is similar to the ADA but provides the following additional protections to persons with disabilities:

» It applies to employers with one or more employees.

» It covers more conditions as disabilities.[3]

Q What issues should I discuss with my attorney?

A

» May I require or request that an applicant take a medical exam, including an HRA, before making a conditional offer of employment?

» May I require or request that an applicant take a medical exam after making a conditional offer of employment?

» May I require or request that an employee take a medical exam or make a disability-related inquiry after employment has begun?

» Have I met the requirement to treat the results of a medical exam or the request for a reasonable accommodation as a confidential medical record?

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1 42 U.S.C. §§ 12111-12117; 29 C.F.R. § 1630.
2 MINN. STAT. § 363A.08 (2010).
3 Minnesota Department of Human Rights, *The ADA vs. the Minnesota Human Rights Act, available at* http://www.humanrights.state.mn.us/education/articles/rs06_4ada_mhra.html (last visited Nov. 16, 2010).