



WORKSITE WELLNESS AND THE AFFORDABLE CARE ACT

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THE PATIENT Protection and Affordable Care Act (ACA)¹, which was signed into law on March 23, 2010, contains a number of provisions aimed at reducing the nation's health care costs through prevention. This focus on prevention includes strengthening worksite wellness programs. Some of the worksite wellness provisions of the ACA update existing laws and regulations. Others create new programs and opportunities for employers to adopt, expand and improve existing programs. The ACA is being rolled out over four years and programs and requirements will continue to be developed during that time. To stay informed of changes and opportunities under the law you can sign up for a weekly health care newsletter at <http://www.whitehouse.gov/weekly-health-care-update>. Information for employers can be found at <http://www.healthcare.gov/foryou/employers/index.html>.

QHow does the ACA update current laws and regulations affecting worksite wellness programs?

A One of the primary laws regulating worksite wellness programs is HIPAA nondiscrimination. Some employers offer incentives to employees who meet specific health related goals, such as reducing premiums or copays for maintaining a healthy weight. Currently, HIPAA nondiscrimination regulations limit the value of incentives that employers may offer to employees who meet health related goals to 20% of the cost of health care coverage. Under the ACA, the maximum value of incentives will increase to 30% of the cost

“The Affordable Care Act’s focus on prevention includes strengthening worksite wellness programs.”

of coverage on January 1, 2014. The law also allows the Secretary of Health and Human Services to increase the maximum value of these incentives up to 50% of the cost of coverage.² There are other requirements that employers must meet to be allowed to offer incentives to employees who meet health related goals. Those requirements are described in the Public Health Law Center's fact sheet, *Worksite Wellness and HIPAA Nondiscrimination*.

QDoes the ACA provide protection for nursing mothers in the workplace?

A Yes, the ACA requires employers to provide private space other than a bathroom and reasonable unpaid break time to nursing mothers for one year after the birth of a child whenever the mother needs to express milk. Protection under the ACA is available to most nursing mothers who are paid

on an hourly basis and salaried employees who make less than \$23,600 a year. The ACA also provides that where state law gives greater protection to nursing mothers, the state law will apply.³ The Public Health Law Center's fact sheet, *Worksite Wellness and Nursing Mothers*, describes these protections in greater detail.

Q Does the ACA provide any funding for worksite wellness programs?

A Yes, the ACA creates a grant program for small businesses to create comprehensive workplace wellness programs.⁴ The ACA authorizes \$200 million for the program, to be available through 2015 or until the funds are used up. Appropriation of funds for this program is part of Congress' budget negotiations. Funding for the program is dependent on the outcome of those negotiations. The program will be administered by the Department of Health and Human Services (HHS).

To be eligible for the grant program, an employer must employ fewer than 100 employees who work at least 25 hours per week, and have had no worksite wellness program in place on March 23, 2010. Companies that have not established wellness programs before March 23, 2010 are eligible for the grants. The application process has not yet been announced.

To be considered comprehensive, a worksite wellness program must include the following:

- » Health awareness initiatives such as health education, preventive screenings, and health risk assessments such as blood pressure or cholesterol screenings, a written questionnaire
- » Efforts to encourage employee participation such as wellness newsletters, E-Health website, wellness calendars, banners/posters, and financial and other incentives
- » Initiatives to change unhealthy behaviors and lifestyle choices such as counseling, seminars, online programs, and self-help materials
- » Supportive environment workplace policies to encourage healthy lifestyle, support groups, public recognition or group progress charts, company gardens and facilities for bikers

The HHS will announce additional guidelines to assure that the programs use evidence-based practices.

Q Does the ACA provide for evaluation of worksite wellness programs?

A Yes, the ACA requires the Centers for Disease Control and Prevention (CDC) to carry out two types of evaluation of worksite wellness programs. The program will evaluate a broad range of worksite wellness programs, and is not limited to programs that received funding for small businesses to establish wellness programs. First, the CDC will provide the tools for evaluating the programs.

The subjects for evaluation will include:

- » Participation levels
- » Changes in employees' health status and productivity
- » Worksite injury rates
- » Changes in employers' medical costs

Second, the CDC will conduct a national survey to assess employer-based health policies and programs by March 23, 2012.⁵

Once funding becomes available, the CDC will announce the criteria and process for selecting businesses to participate in the evaluation program.



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1 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).

2 *Id.* at Sec. 1201; See also Public Health Service Act Sec. 2705.

3 Patient Protection, *supra* note 1, at Section 4207.

4 Patient Protection, *supra* note 1, at Section 10408.

5 Patient Protection, *supra* note 1, at Section 4303; See also Public Health Service Act 399MM.