



Words Of Wisdom On Employee Wellness Programs

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The possibilities with employee wellness programs are endless. Given the uncertainty of how federal regulations pertaining to wellness programs will be enforced, along with the unknowns associated with the return on investment for wellness programs, larger companies appear to be leading the pack in creating such programs.

However, this doesn't mean that smaller companies aren't playing the wellness game. For example, employees at San Diego-based company VAVi Sport and Social can participate in any of the sports leagues and events that VAVi provides to the public and companies, such as 5K runs, softball tournaments, running groups and tennis leagues. VAVi also produces an annual kickball league for technology leader [Qualcomm Inc.](#), a corporate front-runner in prioritizing employee wellness. Qualcomm's global employee health services focus on:



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- healthy eating habit;
- staying active;
- sleeping well;
- taking time to reflect; and
- practicing preventive health.

Similarly, [Westin Hotels & Resorts](#) has implemented health and wellness as part of its core business strategy and encourages both employees and guests to live a healthier lifestyle.

The [Westin Well-Being Movement](#) inspires guests to:

- sleep well;
- eat well;
- move well;
- feel well;
- work well; and
- play well.

Westin encourages wellness while traveling by providing high-quality running shoes and fitness

clothing for rent, offering complimentary concierge guided runs for guests and employees and providing free gym memberships to its employees.

Another example of a company encouraging its employees to take part in corporate wellness is Active Network Inc., an organization which provides solutions to managing events, such as online registration for triathlons or software tracking marathon runners' times. Years ago, employees at Active's San Diego office began exercising together during lunch on the office building's rooftop. This single initiative later grew into the company's wellness program, [ActiveX](#), which provides employees with a variety of exercise and health programs in addition to fundraising opportunities for events, such as 5K runs.

For companies interested in creating a wellness program like the aforementioned organizations, a good place to begin is by checking your current health insurance policy, to determine if there are wellness incentives already included under the plan.

As employee wellness programs must be reasonably designed to promote health or prevent disease, programs are characterized as either a participatory wellness program or a health-contingent wellness program. A "participatory wellness program" incentivizes an employee, either with or without a reward, but does not require the employee to meet a certain health goal. For example, an employer may choose to offer free gym memberships, like Westin provides for its employees, but does not require them to use it.

Alternatively, a "health-contingent wellness program" incentivizes an employee by requiring certain health outcomes to be achieved to receive a reward. Health-contingent wellness programs can be "activity-only" or "outcome-based." For example, while an activity-only program would only require that an employee participate in a walking program to receive a reward, an outcome-based program would require an employee to achieve certain results pertaining to specific health goals.

Participatory wellness programs must be made available to all similarly situated individuals, regardless of health status. Health-contingent wellness programs must meet numerous requirements to be legally compliant. It is important for companies to have a written policy that complies with the amended rules of the Affordable Care Act pertaining to wellness programs and the proposed regulations by the U.S. [Equal Employment Opportunity Commission](#). Wellness programs also must comply with other federal rules, such as the Health Insurance Portability and Accountability Act of 1996, the Consolidated Omnibus Budget Reconciliation Act, Employee

Retirement Income Security Act, the Genetic Information Nondiscrimination Act and applicable state laws.

While numerous companies prioritize employee health, some remain skeptical, especially in light of questions about how the EEOC will enforce the Americans with Disabilities Act in regards to wellness programs. In particular, the ADA allows employers to conduct “voluntary” medical examinations and “voluntary” medical histories as part of an employee health program. See 29 U.S.C. Section 1630.14(d), 42 U.S.C. Section 12112(d)(4). Employers are permitted to offer incentives or disincentives in connection with employees achieving certain health goals. The concern becomes whether offering such incentives or disincentives actually make participation in a wellness program “involuntary.”

For a wellness or health program to be considered voluntary under the proposed EEOC rules, an employer:

1. may not require employees to participate;
2. may not deny access to health coverage or generally limit coverage under its health plans for not participating;
3. may not take adverse action or retaliate against an employee in regards to participation, or lack of participation, in such programs; and
4. must provide reasonable accommodations to allow for participation in a wellness program by employees with disabilities.

The few wellness programs that have been challenged by the EEOC to date appear to penalize an employee for failing to participate in the program. Therefore, employers should consider focusing on providing incentives for employees to participate in wellness programs, rather than penalties. Additionally, companies should treat employee feedback about wellness program participation as a potential request for a reasonable accommodation, and should neither discriminate nor retaliate against an employee for this type of communication.

In light of the positive strides many companies have made to promote health and wellness among employees, others should be encouraged to take the first step toward investing in employee wellness. While there are many unknowns regarding how wellness programs will be viewed by the EEOC, it appears that corporate wellness programs will only become more popular over time as a way to promote health in the workplace. The best way to implement a wellness program is to

be up to date on all policies and regulations related to these types of programs.

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