Legal Compliance Checklist

This list identifies compliance questions and comments that should trigger concepts covered in the WELCOA course *Designing a Legally Compliant Wellness Program*. Use the checklist as a guide to help you consider compliance issues that may arise in designing workplace wellness programs. Please note, however, that this list is not exhaustive. Therefore, it does not cover all potential compliance issues that could occur in designing or implementing workplace wellness programs. To ensure a thorough compliance review, consult your legal counsel.

- Is program part of group health plan?
  - ACA & new ADA incentive rules vs. not

- Does employee get reward regardless of results?
  - Participatory vs. Health Contingent

- Is reward tied to health coverage cost sharing?
  - New ADA limits and EEOC cases

- If Health Contingent, do we meet ACA 5-factor test?

- Does HRA ask about family history or other sensitive information?
  - If yes, does employee get reward regardless? Think GINA.

- If participatory, does program involve HRA/Biometric screen?
  - ADA proposed rules apply to these group health plan participatory programs

- Are there spousal biometric tests?
  - If yes, EEOC may view as family medical history and may want to omit incentives. See Honeywell case.

- Are reasonable accommodations or waivers available so all employees have equal opportunity to earn reward?

- Did we provide notice of the availability of reasonable accommodations or waivers?

- Do we offer follow-up, such as health coaching, after collecting health information?

- Is the program sensitive to the varying abilities and life circumstances of our employees?

- Have we reviewed our confidentiality obligations, policies and procedures?

- Has our vendor reviewed its confidentiality obligations, policies and procedures?

- Have we obtained employee buy-in and communicated the purpose/rationale of the program before roll-out?

- Will this program cause employee discontent?
  - If yes, what can we do to minimize that?

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