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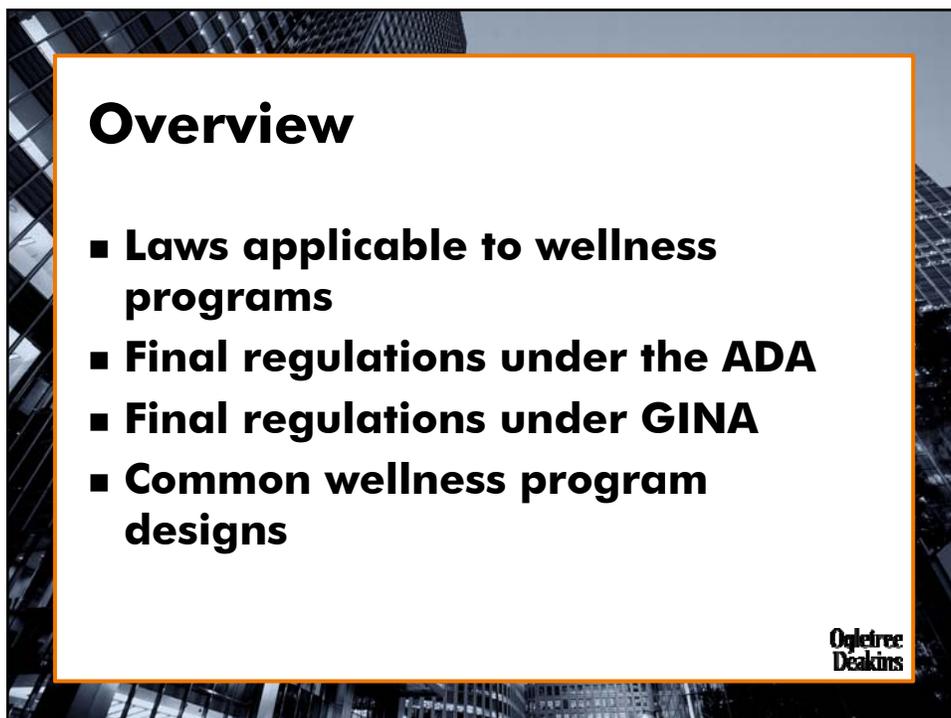
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**Wellness Programs:
Recent Changes in the Legal Landscape**

Jessica Kuester
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Overview

- **Laws applicable to wellness programs**
- **Final regulations under the ADA**
- **Final regulations under GINA**
- **Common wellness program designs**

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Types of Wellness Programs and Related Laws

| Group Health Plan Based | Employment Based |
|-------------------------|------------------|
| ADA | ADA |
| GINA | GINA |
| Tax Laws | Tax Laws |
| State Laws | State Laws |
| ERISA | |
| HIPAA | |
| Affordable Care Act | |

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HIPAA Requirements

- **HIPAA applies if reward tied to group health plan OR wellness program is itself a group health plan**
- **Participatory = no cap**
- **Health contingent (activity-only or outcome-based) =**
 - **30% of self-only coverage**
 - **30% of coverage level enrolled in if dependents can earn reward as well**
 - **50% for programs including tobacco cessation**

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ADA Requirements

- **Employer may not make disability-related inquiries or require a medical examination**
- **Exceptions:**
 - **Bona fide benefit plan for underwriting purposes**
 - **Voluntary medical exams and medical histories as part of a wellness program**

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ADA Final Regulations

To comply with final ADA rules, wellness program must:

- **Be reasonably designed to promote health or prevent disease;**
- **Be voluntary (including limits on rewards); and**
- **Provide prescribed notice to participants**

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ADA Final Regulations

- **“Reasonably designed to promote health or prevent disease”**
 - Has a reasonable chance of improving the health of, or preventing disease in, participating employees
 - Is not overly burdensome
 - Is not a subterfuge for violating the ADA or other laws prohibiting employment discrimination
 - Is not highly suspect in the method chosen to promote health or prevent disease

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ADA Final Regulations

- **“Voluntary”**
 - May not require employees to participate (but can have permissible financial incentives)
 - 30% limit regardless of whether participation-only or outcome-based
 - May not deny coverage under any group health plans or particular benefits packages within a group health plan for non-participation, or limit the extent of benefits (except as specifically permitted) for employees who do not participate
 - May not take adverse employment action or retaliate against, interfere with, coerce, intimidate, or threaten employees
 - Must provide notice (see next slide)

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ADA Final Regulations

■ Notice requirement

- **Written so that the employee is reasonably likely to understand**
- **Describes the type of medical information that will be obtained and the specific purposes for which it will be used**
- **Describes the restrictions on the disclosure of the employee's medical information, the individuals with whom it will be shared, and the methods that will be used to ensure that it is not improperly disclosed**
- **Sample notice on EEOC website**

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GINA

- **Restricts acquisition and disclosure of genetic information**
- **"Genetic information" includes medical information with respect to a family member**
 - **Family member includes spouse**

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GINA Final Regulations

- **Permits financial incentives for spouse to complete HRA or biometric screening if relevant rules are satisfied**
- **Prohibits penalties to employee for spouse's manifestation of disease or disorder**
- **Prohibits incentives for information about the manifestation of disease or disorder in an employee's child**
- **Limit of 30% for spouse's participation**

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Common Wellness Program Designs

HIPAA? ADA? GINA?

- **\$100/month premium discount for employee HRA**
- **\$100/month premium discount for spouse HRA**
- **\$50/month premium discount if the employee certifies that he/she is tobacco free or completes cessation course**
- **\$50/month premium discount if the employee submits to blood draw that screens cholesterol, A1C, and PSA level**
- **\$100 if the employee or spouse participates in stress management coaching via telephone (3 sessions)**
- **Employee has access to an online fitness tool that helps the employee track number of steps walked per day**

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Questions/Discussion

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Thank you!

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