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**Wellness****Incentives May Be Offered for HRAs That Omit Genetic Data, Attorney Says**

By *Nathaline Richardson*

Dec. 17 — Health-risk assessments have become more popular with employers, and to further employee cooperation in filling them out, many employers are offering wellness program incentives, an attorney said at a conference.

Shannon Goff Kukulka, a partner with Waller Lansden Dorch & Davis LLP in Nashville, Tenn., said Dec. 9 during the American Bar Association's 11th Annual Washington Health Law Summit that HRAs have become "sort of a gateway tool for employers to use," but they need to be careful about the questions involved.

Kukulka said that employers that offer wellness program incentives for completing HRAs are prohibited from including in such an HRA any questions that relate to employees' or their spouses' genetic testing or genetic information under the Genetic Information Nondiscrimination Act (GINA) Title I and 2009 interim final rules jointly issued by the Department of Labor, Department of Health and Human Services and the Treasury (189 PBD, 10/2/09; 36 BPR 2291, 10/6/09).

"I think when GINA was first passed and employers were sort of muddling it out and trying to think what it is that we can't ask and what might tip toe into the arena of genetic information or firmly be planted in that arena, we would see HRAs on paper or online that just had two blacked-out questions, rejected questions, and you could tell that was what it related to," Kukulka said. "Now we are to a point where a lot of health risk assessments just don't ask those questions," she added.

"Employers should be balancing between the need to have an effective HRA and understanding they're only going to get aggregately identified data that will help them and will help their issuer" and making sure they are "not running afoul of any employment relationship or any laws that dictate them," Kukulka said.

**Suggestions for HRAs**

During the conference session Wellness Programs Under Health Reform, Kukulka offered suggestions to employers on structuring their HRAs in regard to restrictions under GINA and the interim final rule.

Employers that offer incentives for employees filling out HRAs need to make sure that they don't include any questions that relate to genetic testing or genetic information, Kukulka said. In addition, she said that employers possibly could create two HRAs.

If an employer has two HRAs, one could be for used for employers that don't offer incentives for HRA completion, and that HRA could include questions on genetic testing or genetic information, Kukulka said. The employer's other HRA could be used in conjunction with an offer of incentives for completion of an HRA and, under this scenario, questions regarding genetic testing or genetic information can't be included, she said.

Kukulka said employers could also have one HRA and divide it into two distinct portions.

Under this subdivided HRA structure, "you could say this portion of it is what your reward is going to be based on, and it has no genetic questions whatsoever," Kukulka said.

However, "the second portion, which is clearly labeled as such, might ask some genetic questions, might ask about genetic information, but have a very explicit disclaimer and have instructions stating that inclusion of that portion is completely voluntary and doesn't affect any reward given for the first portion of the HRA," she added.

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