



# SPECIAL ALERT

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## EEOC PUBLISHES QUESTIONS AND ANSWERS (Q & A'S) ON WELLNESS PROGRAMS

The EEOC recently posted Q & A's on the notice requirement for wellness plans under the Americans with Disability Act (ADA). The questions can be found at the following link <https://www.eeoc.gov/laws/regulations/ganda-ada-wellness-notice.cfm>.

The EEOC issued final regulations on how the ADA applies to wellness programs last May. The final rules were discussed in our *Benefit Advisor* at <http://mcgrawwentworth.com/wp-content/uploads/MMABA19-5.pdf>.

The Q & A's clarify the following regarding the new notice requirement:

- The notice requirement takes effect as of the first day of the first plan year that begins on or after January 1, 2017. Once the notice requirement goes into effect, the EEOC does not specify a particular time frame for providing the notice. However, employers must provide it before they collect any health information. Employees receiving the notice must

have enough time to decide whether they want to participate. Sending the notice after an employee has completed an HRA, biometric screening or medical examination is illegal.

- Employers are responsible for ensuring that employees receive the notice. The employer's wellness program provider can send the notice on the employer's behalf.
- Employers do not need to use the ADA's model notice. However, the notice they send must include details on the information to be collected, who will receive it, how it will be used, and how it will be kept confidential. It must also be easily understood by employees.
- Employers do not need to use a specific format. They can use any format familiar to employees. It can be a hard copy or electronic. If it is sent electronically,



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employers need to make sure the subject line is clear; for example, “Notice Concerning Employee Wellness Program.” The notice should not include information unrelated to the wellness plan. This may cause employees to ignore or misunderstand it. Employers may need to provide an alternative for employees with disabilities to make sure they have access to the information in the notice.

- GINA requires employers offering wellness services that provide incentives for spouses’ health information to obtain prior voluntary, written authorization from the spouse before the spouse completes a health exam or risk assessment. It must clearly describe the genetic information being obtained, how it will be used, and any restrictions on its disclosure.

These Q & A’s provide more detail on the new notice requirements. Employers should review the following:

1. Are you required to provide a notice under the ADA or

GINA? The ADA requires a notice only if you provide an incentive for an employee to answer medical questions, complete biometric screening or go to a physician for annual exam. GINA requires a notice only if you provide an incentive for a spouse to answer medical questions, complete biometric screening or go to a physician for annual exam.

2. If the notice requirement applies, download the model notice wording from the EEOC’s website at <https://www.eeoc.gov/laws/regulations/ada-wellness-notice.cfm>.
3. Modify the model notice to reflect the specifics related to your wellness program.
4. Distribute the notice in a way that works for your organization. Make sure:
  - a. There is a reasonable expectation employees will receive it.
  - b. If you send it electronically, use “Notice Concerning Employee Wellness Program” as the subject line.

- c. Make sure the notice is a standalone document and not buried in other details related to the wellness plan or other benefits.
- d. Make sure to send the notice before an employee completes the health assessment or biometric screens. No specific time period is given, but you must allow enough time for the employee or spouse to make an informed decision about participation.

The ADA and GINA notice requirements are new. It may make sense to plan the distribution process now, so it is ready when you conduct health assessments and biometric screenings next year. If you have any questions, please contact your Marsh & McLennan Agency | Michigan Account Manager. [MMA](#)

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Marsh & McLennan Agency LLC

3331 West Big Beaver Road, Suite 200  
Troy, MI 48084  
Telephone: 248-822-8000 Fax: 248-822-4131  
[www.mma-mi.com](http://www.mma-mi.com)

250 Monroe Ave. NW, Suite 400  
Grand Rapids, MI 49503  
Telephone: 616-717-5647 Fax: 248-822-1278  
[www.mma-mi.com](http://www.mma-mi.com)



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