

**QUESTION:** Our company's stand-alone wellness program offers financial incentives to employees who complete a health risk assessment. Can we also offer an incentive to employees whose spouses complete an assessment?

**ANSWER:** Yes, but only if certain conditions are met. Title II of the Genetic Information Nondiscrimination Act (GINA) prohibits employment discrimination based on "genetic information" by, among other things, restricting the acquisition and disclosure of genetic information by employers. Information about the current or past health status of a spouse or other family member is considered "genetic information" about an employee. However, a narrow exception allows employers to provide limited financial and other incentives to an employee whose spouse provides information about his or her manifestation of disease or disorder as part of a health risk assessment administered in connection with health or genetic services the spouse receives through the employer (including as part of a wellness program). These incentives can be in addition to the incentive that the employee receives for completing a health risk assessment.

Certain restrictions apply. For example, the value of the incentives must not exceed certain limits, and notice and confidentiality rules apply. Incentives are not permitted in connection with questions about a spouse's own genetic information (e.g., family medical history or results of the spouse's genetic tests). Nor are they permitted in exchange for any health status information about an employee's children, regardless of age. Employers and their group health plans must also comply with other rules applicable to wellness programs, including the Health Insurance Portability and Accountability Act (HIPAA), the Americans with Disabilities Act (ADA), and a number of other laws. If your company's stand-alone wellness program were offered through a group health plan, Title I of GINA would also restrict the plan's collection of genetic information from spouses for "underwriting purposes" which, in the Title I context, has been interpreted broadly to include determining eligibility for wellness rewards.