

ADA RULES

- Employers and Vendors should have clear privacy policies and procedures related to medical information:
 - Collection
 - Storage
 - Disclosure
 - Encryption
 - Notice of Breach
- Include employee training



ADA RULES

- May not Require Employee to Agree to Sale, Exchange, Sharing, Transfer of Information
- Review vendor agreements to ensure employees do not unwittingly waive confidentiality protections.

FEDERAL TRADE COMMISSION ACT (FTCA)

- Prohibits unfair or deceptive practices in the marketplace.
- FTC uses FTCA s. 5 to protect consumer data privacy and security.
- Case examples:
 - PaymentsMD, LLC
 - GMR Transcription Services
 - Genelink & Foru International
- FTCA demands transparency and follow-through on privacy/security obligations.

A photograph of Simon Sinek, a man with glasses and a microphone, gesturing with his hands while speaking. He is wearing a red and white checkered shirt. The background is dark with a red wall on the right.

“People don't buy what you do
they buy **why**
you do it!”

Simon Sinek

(EVP) Does it serve & add value?

- Pre-launch timely, clear & concise communications
- Part of engagement strategy
- Post-launch timely, clear & concise communications
- Embrace meaningful use of health benchmarks and metrics

WORKPLACE STRESS

CASE SCENARIO

- Ellen is a pharmacist at ABC Hospital. She suffers from pre-existing depression, insomnia and migraines. She complains that her work environment at the hospital has poor air quality, high levels of noise and an overly cool work environment. Basically, she is not physically comfortable at work and she argues that the conditions intensify her pre-existing conditions. Ellen has difficulty concentrating and therefore commits a lot of errors at work. ABC Hospital fires Ellen for poor job performance. Ellen sues ABC for disability discrimination.
 - Does Ellen have a valid ADA claim? What other concerns should ABC have?

ADA

- Prohibits discrimination by employers on basis of disability in regard to terms, conditions and privileges of employment.
 - Discrimination includes:
 - Requiring **medical examinations**; and
 - Making inquiries as to whether employee has disability unless such exam or inquiry is:
 - Job-related and consistent with business necessity
 - Must provide **equal opportunity** for disabled employees to participate in programs and offer reasonable accommodations.



HR 1313

- "Preserving Employee Wellness Program Act"
- Introduced on March 2, 2017
- May be part of a forthcoming, second wave, ACA repeal and replace bill package in the House



HR 1313

- Subjects ACA "participatory programs" to maximum incentive of 30% of total cost of coverage
- Wellness programs offered in conjunction with a group health plan need to comply with five-factor test under ACA.
- Wellness programs not offered in conjunction with group health plan must comply with 30% of total cost of coverage incentive limit
 - Not subject to remaining five factors, such as:
 - RAS
 - Reasonably designed
 - Notice



HR 1313

- How does this translate?
 - Extraordinary freedom for employers to collect and use employee and family member health information.
 - Weakens current privacy protections for employees and their families
 - Can incentivize the collection of employee family medical history and the health information of family members
 - Incentive amount can be higher for employees enrolled in family coverage
 - Can conduct health risk assessments in connection with open enrollment
 - Employers can use health/genetic information for purposes of disease management or offering greater incentives to those with adverse health factors.
 - Would still be subject to ADA and GINA anti-discrimination rules.

Missed Opportunity?!





EPIGENETIC Influence

is a game changer!

The Relaxation Response Team

- Develop communications that excite and engage "the why"
- Offer skill building workshops i.e. Yoga, HRV Training, Deep Belly Breathing, Tai Chi
- Create space for employee's to mediate and practice relaxation...maybe sauna
- Influence behavior through relaxation response policies

(EVP) Does it serve & add value?

- Communicate value of relaxation response
- Create meaning & honor that motivation may be the goal for some
- Influence skill building through activities
- Create opportunities through physical environment and policies
- Offer a mechanism for feedback to evaluate effectiveness

Quick Start Resources

- WELCOA www.welcoa.org
- Total Worker Health www.cdc.gov/niosh/twh/
- Health Promotion Live www.HPLive.org
- Rule the Rules of Workplace Wellness Programs *Authors Barbara J. Zabawa, JD, MPH & JoAnn Eickhoff Shemek, PhD* www.americanbar.org
- Workplace Wellness that Works-10 Steps to Infuse Wellbeing and Vitality into Any Organization *Author Laura Putnam*
- Check. Change. Control. www.heart.org
- www.greatist.org Health promoting & meaningful and content & tools
- www.heathbrothers.com Design effective, health communications

QUESTIONS?

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