

**OSC | 10**  
Ohio Safety Congress & Expo

**Employee wellness programs:  
Can employers mandate a  
healthier workplace?**

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Bonnie L. Kristan, Esq.

Thursday, April 1, 2010 2:15 to 3:15 p.m.

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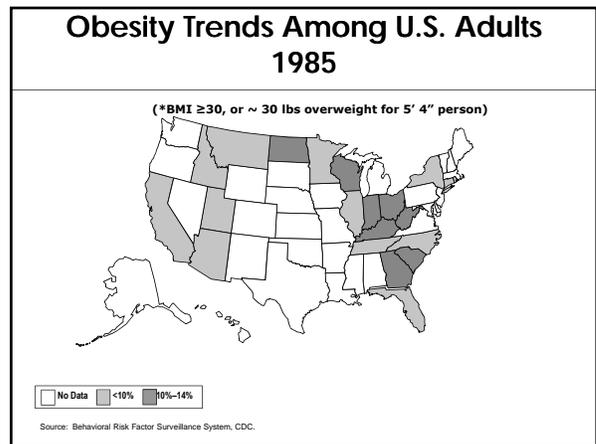
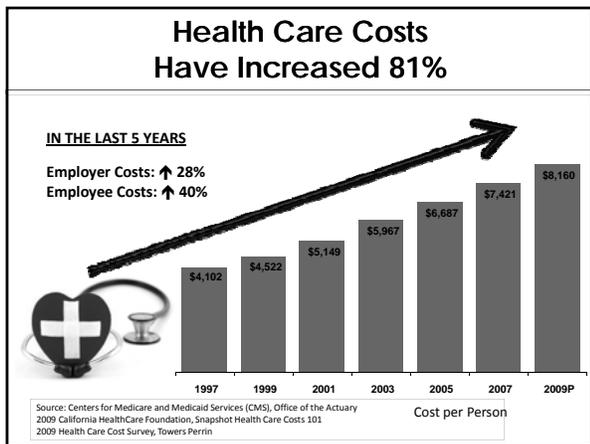
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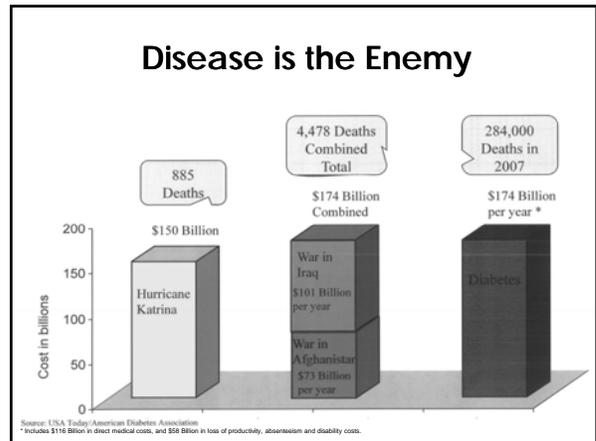
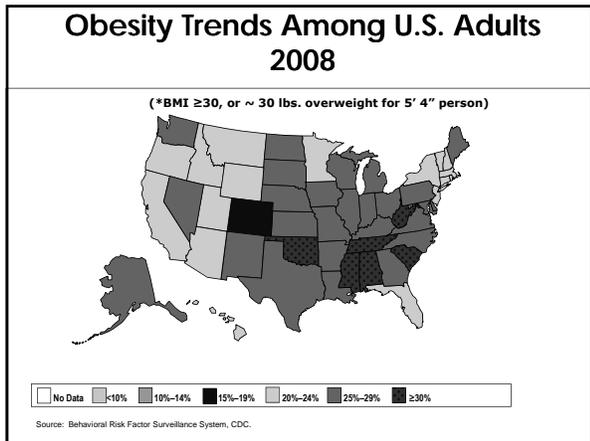
**Agenda**

- Relationship Between Employees' Health and Healthcare Costs
- Wellness Trends
- Legal Challenges Presented by Wellness Plans
- How to Get Started

**Human Evolution**

The shape of things to come





## Obesity in the Workplace

- **Obese workers' health care costs are seven times higher than those of non-obese employees.**
- **Obese workers file twice the number of workers' compensation claims.**
  - Their claims were roughly 3 times more expensive.
- **Obese workers lose 13 times more days for work-related illness and injury.**



Source: Duke University Medical Center, 2007, and National Council on Compensation Insurance, 2009.

## Smoking in the Workplace

- **Smokers have twice the accident rate of non-smokers**
- **Average annual extra medical expenses from regular exposure to secondhand smoke**
  - > \$490
- **Average additional medical expenses per year for a smoker**
  - > \$1,623
- **Average workers' compensation costs**
  - > non-smokers \$176
  - > smokers \$2,189

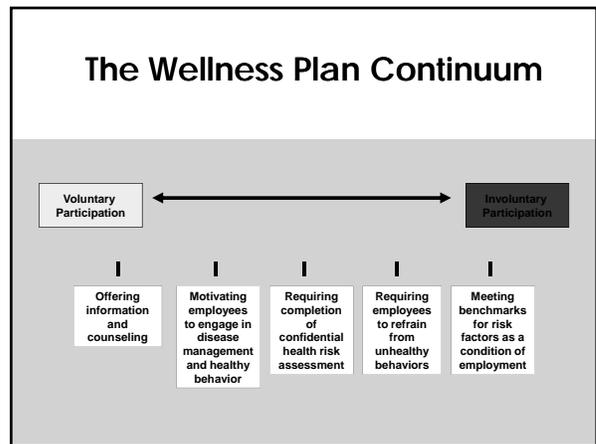


Source: Journal of Occupational and Environmental Medicine, December, 2003.

## Trends in Employee Wellness Programs



- **Movement from reimbursement of medical expenses to prevention and management of chronic disease.**
- **A proactive approach to improving employees' overall health.**



## Examples of Company Programs

- **Progressive Medical-** \$8 cost to employee per pay period. If employees earn 24 fitness points in each 12 week period then they get 40% off health insurance premiums. Also includes use of on-site fitness center, access to wellness specialist, bi-annual fitness assessments to monitor your progress, periodic health screening and access to Smoking Cessation classes.
- **Wagstaff & Cartmell Law Firm-** Member of "Wellness Jackpot Program". Comprehensive health survey, "lotto tickets" for each day that employee exercises, drawing for prizes including quarterly \$10,000 grab bags; San Francisco vacation for 2; brand name merchandise drawings (Ipods, etc); quarterly gas card drawing; annual "powerbag" shot at one million dollars.
- **Marathon Petroleum-** All physical exams free of charge, health points earned in various ways (filling out surveys on health, eating enough veggies, working out), if sufficient points are earned then family health club membership is complimentary. Weight watchers, smoking cessation programs and alcohol cessation programs are covered by Marathon.

## Examples of Company Programs

- **Scotts Miracle Grow-** Implemented LiveTotal Health Initiative which includes a \$5 million medical and fitness center staffed with 2 FT doctors, 5 nurses, a dietician, counselor, 2 PTs, and a team of fitness coaches, with a drive-thru window for free prescriptions. Employees who take a healthcare self-assessment earn a \$40/mo. reduction in insurance contributions. Health coaches identify employees as moderate to high risk and draw up a management program. Employees who do not follow recommendations are required to pay \$67/mo. in insurance premiums. Employees are required to be tobacco-free at all times.
- **Pitney Bowes Inc.-** Established the Pitney Bowes Health Care University, an incentive-based program designed to assist employees in improving and maintaining their health focusing on 5 key habits: no tobacco use; 5 fruits and vegetables/day; BMI <25; 30 minutes of activity/day; and 100% seatbelt use. A behavioral health module to manage psychiatric short-term disability claims was implemented.

## Emerging Trends in Employer Wellness Programs



1. More Effective & Sophisticated Workplace Weight-Management Programs
2. Increasing Demand for Stress-Related Wellness Programs
3. Increasing Demand for Tobacco-Cessation programs

## Emerging Trends in Employer Wellness Programs



4. Increased Focus on Plan Participation and Results
5. Top-Down Transformation of the Company Culture
6. Highly Individualized Program Designs and Rewards

## Health Insurance Portability and Accounting Act of 1996 (HIPAA)



### DOL Wellness Program Checklist:

- 1) Is the first day of the current plan year after 7/1/07?
- 2) Does the plan have a wellness program?
- 3) Is the wellness program part of the group health plan?
- 4) Does the program discriminate based on a health factor?
- 5) If the program discriminates based on a health factor, is the program saved by the benign discrimination provisions?

## The HIPAA Five

1. Rewards cannot exceed 20% of total cost
2. Reasonably designed to promote health or prevent disease
3. Annual eligibility
4. Alternative standards for participants with medical conditions
5. Plan materials must disclose alternatives and waiver



## Americans with Disabilities Act (ADA) & the ADA Amendments Act (ADAAA)

### Issues in Wellness Programs:

- Asking questions about an employee's health or requiring a medical examination
- Confidentiality requirements on the disclosure of medical information
- When an employee is unable to achieve a health factor requirement under a mandatory wellness plan because of a disability

## Americans with Disabilities Act (ADA) & the ADA Amendments Act (ADAAA)

- **Prohibits most medical examinations and inquiries**
- **Exception: Voluntary Wellness Programs**
- **Confidentiality Provisions**

## Discrimination Against Persons with Disabilities



- **Must offer a reasonable accommodation or waiver of standards**

## Genetic Information Non-Discrimination Act (GINA)

- **Prohibits collection of genetic information or genetic testing**
- **Exception: Voluntary Wellness Programs**
- **Confidentiality Provisions**

## Age Discrimination in Employment Act (ADEA)



- **Disparate treatment:** incentive is designed to disfavor older (40+) workers
- **Disparate impact:** although facially neutral, incentive adversely impacts older workers

## Other Possible Discrimination Claims



- **Gender Discrimination**
- **Religious Discrimination**
- **Racial Discrimination**

## National Labor Relations Act



- There may be a duty to bargain with the union before implementation of a wellness program.

## Privacy and Other Statutes



- State laws on confidentiality of medical information
- State laws on off-duty conduct

## ERISA



- Section 510 claims make it unlawful for an employer to “discharge, fine, suspend, expel, discipline, or discriminate against [an ERISA-covered benefit plan] participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.”

## Starting Point for Wellness Programs



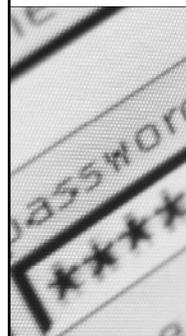
- Ask employees to fill out “Health Risk Questionnaires” which will inform them of problem areas and give suggestions for how to achieve better health.
- Offer employees methods to improve their health inside and outside of work.
- Create incentives in the form of lower employee contributions, raffles or rewards.
- Adopt better workplace practices - better offerings in the vending machines, availability of fitness equipment.

## Health Risk Assessment

- Measures your current health status
  - 30 minutes to complete
  - Online versions
- Assesses lifestyle behaviors
- Identifies good health practices
- Detects lifestyle health risks and provides information to help avoid those risks
- Identifies your “Stage of Readiness to Change”
- Medical Questionnaire?



## Privacy and Confidentiality



- Personal health information is **NOT** shared with anyone including the employer or insurance provider
- HIPAA, GINA and ADA regulate what information can be collected and shared
- Data is always reported to the employer in aggregate form and is never individually identifiable



*Thank You*

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