



From Incentives to Penalties: How Far Should Employers Go to Reduce Workplace Obesity?

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This month, more than half of Americans probably made health-related New Year's resolutions, judging from past data, but few are likely to stick to them. Employees at CFI Westgate Resorts, an Orlando, Fla.-based vacation properties company, might consider themselves lucky: They have an incentive to get healthy. If they join in the company-wide weight-loss contest this month and succeed in reaching their goals, they could win cash prizes or a luxury vacation.

Inspiration for the contest, now in its second year, came from CEO David Siegel, who himself recently lost more than 20 pounds. "He put it on the radar," says Mark Waltrip, chief operating officer at Westgate, adding that in the contest's first year, some employees lost up to 60 pounds.

Employers like Westgate are trying to push employees into healthy lifestyles, including reducing obesity, a condition estimated to cost U.S. companies \$13 billion per year, according to the Washington D.C.-based National Business Group on Health. But using incentives, and in some cases penalties, to change employee behavior raises a host of legal, moral and practical questions, according to Wharton experts and others.

"Any company moving into this area has to consider what employees think is unreasonable or an invasion of privacy," says [Janice Bellace](#), a professor of legal studies and business ethics at Wharton. "It's a ticklish issue, particularly when so many Americans are overweight." Two-thirds of American adults are either overweight or obese, according to the National Center for Health Statistics, part of the Atlanta-based Centers for Disease Control (CDC).

It's more than coincidence that Westgate was one of the first companies to take a hard line on smoking several years ago. According to [Peter Cappelli](#), director of the [Center for Human Resources](#) at Wharton, crack-downs on employees who smoke, on or off the job, were the "thin end of a wedge.... It has become socially acceptable to attack smoking and smokers. Will we see the same thing around obesity? The time is probably ripe for that."

Invading Employees' Private Lives

In 2002, Siegel announced that all Westgate employees would have one year to quit smoking completely or else face termination. The company offered smoking cessation classes, nicotine patches and other support, according to Waltrip, who said Siegel decided on the policy after a close friend died of lung cancer -- and after he learned that Florida state law does not protect smokers. Another concern was the fact that smokers drive up health care premiums.

"If someone wants to smoke, that is their choice, but when their choices impact their employer and fellow employees, then, frankly, we're not going to take it," says Waltrip. Since the ban on smoking was finally enacted in September 2003, health premiums have increased at an average of five percent at Westgate, much lower than increases seen at other companies, according to a December 2007 article in the *Orlando Sentinel*.

But, as Wharton's Cappelli notes, everything that is legal is not necessarily ethical or socially acceptable. Siegel found himself in the center of controversy late last year when he told a Florida TV station that Westgate would take every legal step to insist on healthy employees. "If you are an alcoholic and we have



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the right to fire you, we will do so. And if you are obese and there is a way for us not to hire you or to fire you, we will do that, too," he said. Bloggers and online commenters attacked Siegel for discriminating unfairly against overweight people and stepping too far into employee's private lives.

According to Waltrip, however, Westgate is approaching the obesity issue more gingerly than Siegel's comment would imply. "Weight is complicated -- it can be caused by disease -- so before we go down that path [of penalizing employees who are overweight], we need to understand the issue and build a consensus around it." He says the company does not currently penalize overweight or obese workers.

Yet other American companies have already moved forward with financial penalties, most often based around how much employees pay for their health insurance plans. The *Wall Street Journal* reported in December 2007 on a Geneva, Ind.-based bank that raised employee health insurance deductibles from \$500 to \$2,500, but offered \$500 credits to employees who passed screenings for cholesterol, body mass index, blood pressure and tobacco.

To sell the concept to employees, says Cappelli, employers need to show that penalties are just one form of incentive. "You can say, 'We offer weight management as part of wellness programs, and controlling your weight benefits you, the employee. The next step is rewarding you for making improvements.' In many cases, the difference between a reward and a punishment is zero," as those who lose weight or stop smoking are rewarded and those who do not are effectively punished by higher deductibles, he says.

Building an internal consensus is critical, Cappelli adds, particularly when employers may be "out in front" of the wider culture, in which Americans are still uncomfortable with the idea of penalizing personal behavior at the workplace. According to an October 2007 Wall Street Journal Online/Harris Interactive poll, for example, two-thirds of 2,300 American adults polled said employers shouldn't have the right to fire overweight employees or even require enrollment in weight-loss programs.

"In the past, employers have gotten ahead of the culture on issues like discrimination and sexual harassment," says Cappelli. Corporate settings may be a natural arena for behavior change simply because corporate cultures tend to be "hard charging. I don't know of too many corporations where the top executives don't at least pretend to be exercising."

An Unfit Worker Who Didn't Fit in

A 2007 report issued jointly by PricewaterhouseCoopers' Health Research Institute and the World Economic Forum called on business leaders to fight chronic diseases (many of which are related to obesity) in the workplace, not only to cut direct and indirect costs but as a matter of social responsibility. "Traditionally governments, not employers, have been responsible for the health of people. However, many business and policy leaders now believe that governments alone cannot prevent the spread of chronic disease," says the report. "Wellness must be inseparable from business objectives and long-term mission."

When cast in these terms, employer concern for employee health can sound almost noble; news articles on the topic quote employees testifying that without incentives from employers, they would have never lost weight or quit smoking.

But when does concern become paternalism or even discrimination? "Many employees have a grossly distorted view of their legal rights. They think the law prevents all types of discrimination against employees. In fact, the legal protection is narrow and quite specific," says Wharton's Bellace. Michigan is the only state, in addition to the District of Columbia, with a law prohibiting discrimination based on weight, in addition to other categories like height and race.

The presence of such state or local ordinances can make all the legal difference. In San Francisco, one of two cities in California that prohibits discrimination based on height or weight, for example, a 240-pound aerobics instructor successfully sued Jazzercise Inc., which had refused to grant her a franchise license because she did not conform to the company's policy of instructors "looking fit."

What shapes perceptions about acceptable treatment of overweight employees are health insurance practices, says Bellace. Since the federal agency regulating the industry agreed several years ago that health insurance companies could charge differential rates for obese people, "Companies are beginning to

respond and explore that option for themselves."

But charging obese workers more for health premiums is no simple task, notes Bellace. "Do you have regular weigh-ins? And who qualifies as obese? If you strictly follow the body mass index criteria, even people with a BMI of 25 or 26 are considered overweight. What about a woman who gains 60 pounds during pregnancy and doesn't lose it right away?" It's a "dilemma for employers because they do want people to lose weight, but they don't want to fire people for being overweight, or even refuse to hire them, because two-thirds of Americans are overweight," she says.

Some employees or ex-employees have sought protection in the federal Americans with Disabilities Act (ADA), claiming their obesity is a disability, but so far without much success. A 2006 ruling on a case involving a 400-pound dock worker concluded that obesity was not a disability unless it has a proven physiological cause.

But in a 2006 article, Christine Reinhard, a lawyer with the worldwide firm Akin Gump Strauss Hauer & Feld, cautions employers that some viable legal strategies remain open for obese people seeking redress through the disabilities Act. As a result, she writes, "Employers should avoid making stereotypical assumptions about what job functions overweight or morbidly obese employees can perform or cannot perform."

That each employee or potential employee should be judged on his or her merits, rather than body size, is exactly the argument the Obesity Action Coalition makes to employers, according to James Zervios, communications director with the two-year-old Tampa, Fla.-based patient advocacy organization. "We have heard from hundreds of employees how once they lost weight, they received promotions or other recognition. The fact is, they were just as smart when they were bigger. There is a lot of bias out there," says Zervios. When overweight or obese people contact the coalition seeking help with workplace discrimination, Zervios notes, his organization contacts the employer and seeks to educate them about the benefits of offering obesity management services to employees instead of firing or penalizing them. "Since there is no law, we can't really push the point," he says.

Other advocates for the overweight point to research showing that obese people face ongoing discrimination in both hiring and treatment on the job. According to an October 2007 study led by Michigan State University researchers, for example, obese women are 16 times more likely to face workplace discrimination than men, possibly opening the door for obese female employees to seek legal recourse through laws prohibiting sex discrimination.

Which workplace practices toward obesity are acceptable may ultimately be determined by employees, says Bellace. Noting that earlier legislation protecting employees from discrimination came as a result of a groundswell in public opinion, she says, "A lot depends on whether or not employees push back."

Keep Moving: The 'Office of the Future'

For employers considering ways to reduce obesity in the workforce, Ron Ozminkowski, who has researched the impact of chronic disease on corporate profits, advises the use of cash incentives over other incentives such as merchandise or days off. "Research shows that rewards around \$100 get people to participate" in weight-loss or other wellness programs, says Ozminkowski, vice president of research and development at Ingenix, a health care information and research firm based in Eden Prairie, Minn.

Such incentives, however, have to be sustained over the long term, Ozminkowski adds. "Employers as a group are notoriously short-term thinkers, but there is no quick fix. If you think you can have a weight-loss program today but not one next year, you're flat wrong."

According to Tracie Canby, senior vice president for cost management strategies at Meritain Health, a Buffalo, N.Y.-based company that manages self-funded health benefit plans, incentives are important for motivating behavior, but "disincentives" like higher premiums, paycheck reductions and, ultimately, the threat of termination, can help motivate those who balk at company wellness programs -- and who may be the very ones who need help most.

"The more acute [a person's] condition or risk factors, the more resistant that [person] can typically be to participation in a wellness program," writes Canby in a December 2007 article. A company's wellness

strategy should be "mostly carrots and a few sticks," with the mix tailored to the actual needs of the employee population.

But speaking of carrots, what about all those oversized muffins and buttery croissants at morning meetings? Do employers have any responsibility to change the work setting itself? Ozminkowski praises companies like Dow Chemical for thinking more broadly about creating a healthy environment. "Dow now has a more healthful menu of choices for meetings," he says, calling on companies to offer better cafeteria options and include fitness opportunities like walking trails or on-site gym facilities.

Some researchers go further, however, making a link between working conditions and obesity. "The sedentary nature of much work today increases the risk of chronic disease among employees," write the authors of the PricewaterhouseCoopers and World Economic Forum Report, noting that employees in the service sector are particularly vulnerable.

If James Levine, an endocrinologist at the Rochester, Minn.-based Mayo Clinic, has his way, all office workers would move throughout the day. Levine and a team of researchers at his Non-exercise Activity Thermogenesis (NEAT) lab have designed their own "office of the future," where they work on computers and talk on the phone while walking slowly on a treadmill and conduct meetings while walking on an indoor track or even shooting hockey pucks.

Levine's team worked with office furniture manufacturer Steelcase to create a commercial product, the WalkStation, which has a desk mounted on top of a treadmill. According to a spokesperson for Steelcase, demand has been high, and the first orders are being shipped out early this year. A spokesman at the Mayo Clinic says Levine and his team are exploring ways of offering more consulting services to businesses that want to incorporate motion into the workday.

Widespread adoption of such innovative strategies is a possible but distant future, says Cappelli. "Arguing that employers are responsible for the way the world is organized is not popular." Business leaders, like most Americans, see the issue of health largely "through an ideology of individual choice and personal responsibility."

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