

The Perils of Wellness

Author : Mary Crossley

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Gordon Hull & Frank Pasquale, [Toward a Critical Theory of Corporate Wellness](#), **BioSocieties** (2017).

The non-stop growth of employee wellness programs presents a rich teaching (and scholarly) opportunity for health law faculty. We can interrogate the employers' continued embrace of wellness programs, despite the absence of proven cost savings, and consider concerns about the programs' purported voluntariness and the heavier burdens they place on workers who find meeting program demands difficult or objectionable. We can explore the evolution of laws (HIPAA and the ACA) establishing the legal parameters of wellness programs and how federal agencies have issued regulations seeking to reconcile their incentive structures with the anti-discrimination principles found in the ADA, GINA, and the ACA itself.

A new article by philosophy professor Gordon Hull and law professor Frank Pasquale offers a critical perspective on what wellness programs *do* accomplish for employers, even if they don't produce health plan cost savings. The authors' basic thesis is that wellness programs serve as a vehicle for employers to exercise increasing control over employees' non-work lives and in the process to "entrench the idea that one belongs to one's workplace, extending market relations ... into the home and other spaces." By drawing on philosophy (primarily Foucault) and neoliberal economic theory (for example, Gary Becker's human capital theory), Hull and Pasquale unveil harms associated with employer wellness programs that go beyond concerns about worker privacy and their disparate impact on unhealthy or disabled employees. Integrating aspects of health law, political philosophy, and data analytics, the article offers a fresh, and troubling, view of wellness programs.

After outlining the legal environment of wellness programs, their origins, and the lack of evidence that they generate savings from employees' improved health, Hull and Pasquale describe how wellness programs exemplify a neoliberal vision of the employer-worker relationship by making individual workers responsible for pursuing "wellness" for their employer's benefit. An employer implementing a program communicates to a worker that she should invest in her own wellness as part of her human capital, while at the same time "unravel[ing] the risk-pooling aspects of insurance" by shifting the risks of medical costs onto the workers most likely to generate them. In short, wellness programs provide financial incentives and penalties in an effort to convince employees that health risks are something for which the employee is individually accountable, in stark contrast to a risk-spreading conception of insurance.

Hull and Pasquale tease out additional troubling aspects of wellness programs, particularly how they serve to create a "social truth" about what "wellness" even means. Notwithstanding the limitations of current knowledge about what actions truly promote individual health in the long term, programs adopt approaches to "wellness" that rely on employer surveillance and place responsibility squarely on the shoulders of individual workers, while ignoring and even exacerbating factors that lie beyond those workers' ability to control. A telling example is employment practices that diminish workers' job security, even though the stresses of job insecurity may contribute to disease. Hull and Pasquale highlight the irony of some employers' implementing wellness programs that "reward displays of happiness and laughter" while simultaneously and deliberately making employees more insecure.

The article concludes by considering harms associated with wellness programs that go beyond shifting risk to employees for health-related outcomes often beyond their control and reinforcing the idea that workers are obliged – in all aspects of their lives – to invest in themselves in order to benefit their employers. From a public policy perspective, wellness programs also obscure the value of public health measures that could address health-related matters – like clean air, clean water, safe streets, and limits on the availability of dangerous products – that lie beyond individual

workers' control. In contrast to wellness programs' privatized and individualized vision of health, public health supplies a vision of health as a matter of public concern, subject to empirical validation and democratic policy development.

Hull and Pasquale's article presents important insights in a manner that is accessible even to readers who may be relatively unschooled in philosophy or political theory. I'll admit that (after spending the semester telling students to use simple and direct words in their papers) I found off-putting some of the jargon used. (Phrases like "apparatus of neoliberal biopower" and "individual responsabilization" come to mind.) That said, I found the article tremendously valuable in helping to unravel the puzzle of employers' seemingly illogical ardor for wellness programs and suggesting their broader implications. As Hull and Pasquale conclude: "Those concerned about the substantial burdens imposed by wellness programs on workers must address ... politico-economic theory directly, rather than just continuing to point to the dubious outcomes of wellness programs. Because they work to establish the truth of wellness, these programs are difficult to discredit on empirical grounds. For the neoliberal, there is nearly always a rationale for 'just one more study' of a private alternative to public service...." I recommend the article highly.

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