In this introduction, each author provides her personal perspective and experience to help establish the need for and purpose of this textbook. In addition, they describe some historical background and general information related to workplace wellness to help provide a foundation for understanding and applying the many workplace wellness laws.

**Barbara’s Perspective**

*Shocking.* That is the word I use to describe my discovery that the wellness industry had scarce resources regarding— and paid even less attention to— how the law affects workplace wellness program design. Plenty of federal and state laws impact workplace wellness programs, but the industry is not discussing those laws at wellness education programs. My mission is now to solve that problem.

I am a lawyer and public health professional committed to making the law more accessible to the wellness industry. This book aims to serve as a guide for those interested in developing legally healthy wellness programs in the workplace. It does not, however, give legal advice. Honestly, I can’t give you legal advice because you, as my reader, are not my client. Also, I am not licensed to practice law in all 50 states (only Wisconsin and New York). Nevertheless, all of you who grapple with designing or supporting legally compliant wellness programs, or those of you who do not know what legal issues might even exist: This book is for you.

Because of the dearth of wellness law resources, many in the wellness industry feel confused, lost, neglected, and scared when it comes to applying or even considering the law in their wellness program design. My message to you is “Don’t be scared!” You are not alone in your quest to make the United States population healthier through workplace wellness. You are not alone in wanting to do the right thing by the law and by employee health. Most of all, you are not alone in feeling lost, confused, unappreciated, or neglected.
when it comes to legal compliance in the wellness industry. More on that in a moment. Before we get too far ahead of ourselves, however, let’s take a step back and examine the wellness industry.

According to a 2010 study, the wellness industry represents a market of nearly $2 trillion globally. It is made up of numerous clusters, such as spas, complementary and alternative medicine, healthy eating/nutrition and weight loss, preventive/personalized health, medical and wellness tourism, fitness, and mind-body, beauty and anti-aging, and workplace wellness. Future books may address these other clusters. However, this first edition of Rule the Rules focuses on the workplace wellness component of the wellness industry. Workplace wellness makes up approximately $40 billion of the total $2 trillion global wellness industry.

Interest in workplace wellness in the United States is growing. A 2013 survey of about 900 large employers in 15 countries found that 84 percent planned to increase their investment in wellness programs over the following two years. In addition, according to a 2013 report, annual revenue growth in employee wellness was 5.6 percent between 2008 and 2013, and that growth was projected to grow an average of 9.4 percent annually over the next four years. The number of wellness vendors now totals more than 8,000.

The Affordable Care Act, passed in 2010, has helped spur workplace wellness growth, in part because of its emphasis on prevention and lowering health costs, as well as the looming 40 percent excise tax starting in 2018 on high-cost plans. Nevertheless, workplace wellness was popular even before 2010. For example, in the mid-1980s, nearly two-thirds of U.S. worksites with 50 or more employees offered at least one health promotion activity. It is because of this enduring popularity that
I believe workplace wellness efforts will continue despite the fate of the Affordable Care Act in 2017 and beyond.

The popularity of workplace wellness programs offers a chance to shift America’s paradigm from sickness care to well-being care. Indeed, a primary distinction between the wellness industry and conventional medicine (or, as some call it, “sickness care”) is that the wellness industry is proactive, whereas the sickness industry is reactive. See Figure FM.2. Specifically, the wellness industry provides products and services to people with the goal of making them feel healthier and look better, slowing the effects of aging, and/or preventing sickness from developing. People often become customers of the wellness industry voluntarily.

<table>
<thead>
<tr>
<th>Illness Care</th>
<th>Wellness Care</th>
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<tr>
<td>*Reactive</td>
<td>*Proactive</td>
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<td>*Treatment of Disease</td>
<td>*Prevention of Disease</td>
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<td>*Increased Costs</td>
<td>*Decreased Costs</td>
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Figure FM.2 Paradigm Shift from an Illness Care Model to a Wellness Care Model

In contrast, the sickness industry provides products and services to people to treat the symptoms of or eliminate disease. People become customers of the sickness industry by necessity, not choice. Yet, conventional medicine is failing us. People who are asked to name the most important problems they and their families face generally rank concerns about health a close second behind financial issues. Despite this concern, global cumulative health spending is increasing. In other words, the exorbitant amount we are spending on sickness care is not addressing our most pressing concerns. In response

10 Id.
11 Id.
12 Id. at 14.
13 Id. at 14 (stating that in 2002, the cumulative health spending of 24 OECD countries was $2.7 trillion and that this amount is expected to more than triple to $10 trillion by 2020).
to the failing healthcare system, many people are maintaining their own health and investigating alternative forms of health care.14

Shifting from a sickness care to a wellness care model is far more important to the overall economy than it is to short-term cost-savings gains for individual companies—but the shift is also important to the employer’s bottom line. Studies show that workplace wellness programs provide a number of benefits, including reduced health benefit costs. One often-cited study by Baicker, Cutler, and Song from 2010 states that medical costs fall about $3.27 for every dollar spent on wellness programs, and absentee day costs fall by about $2.73 for every dollar spent.15 This study’s authors also acknowledge many other likely benefits from workplace wellness programs, such as improved health, reduced turnover, and lower costs for public programs such as disability insurance and Medicare.16 Meta-analyses of quality studies conducted by Aldana and Chapman also have shown similar results.17 Some dispute the cost savings, however, or at least question the magnitude of the financial benefit.18

Regardless, employers in the United States provide 58.4 percent of non-elderly Americans’ healthcare coverage.19 This translates to approximately 149 million non-elderly people who receive health insurance through employment in the United States.20 Because employees are a

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14 Id. at 15.
15 Katherine Baicker, David Cutler, and Zirui Song, “Workplace Wellness Programs Can Generate Savings,” Health Affairs 29, no. 2 (Feb. 2010).
16 Id.
18 Steven Ross Johnson, “Firms Revamping Employee Wellness Programs,” Modern Healthcare 2 (May 24, 2014): 2, http://www.modernhealthcare.com/article/20140524/MAGAZINE/305249980 (citing the 2013 RAND study, supra note 4, which found that the overall return on every dollar invested in a wellness program was $1.50 and that there were significant savings from the disease-management component of these programs, with savings up to $3.80 for every dollar spent, including a 30 percent reduction in hospital admissions); see also Al Lewis and Vik Khanna, Surviving Workplace Wellness with Your Dignity, Finances and Major Organs Intact (The Health Care Blog, San Francisco, CA: 2014) (noting that Professor Baicker, author of the Health Affairs study that found a 3.27 to 1 ratio of cost savings, recanted the figure and changed her story to say it is too early to tell if there are cost savings in workplace wellness programs and instead proposed that CEOs experiment on their employees to see if anything works).
“captive audience” and exhibit a relatively high prevalence of modifiable risk factors, such as inactivity, poor nutrition, tobacco use, and frequent alcohol consumption, there is significant potential for a substantial health impact.21

You may ask why U.S. employers would take on a global task of improving the health and well-being of their employees and community if the immediate financial benefits may be minimal to none. Here are three reasons:

First, overall, the medical community has failed in wellness. It is not entirely their fault, however. The current public and private insurance system does not financially reward wellness, although that is slowly changing, as discussed in Chapter 11 of this book.

Second, the investment in wellness is not an isolated investment. It is tied to human resources, marketing, leadership, and research and development. Investing in employee wellness, when done right,22 can catapult a company’s most valuable asset, its employees, to unimaginable levels. Indeed, according to the Centers for Disease Control and Prevention, 40 percent of employees report feeling stressed at work.23 Stress plays an important role in several types of chronic health problems, especially cardiovascular disease, musculoskeletal disorders, and psychological disorders.24 The wellness way of thinking can allay stress and increase an employee’s productivity. Employees who have a sense of well-being are more productive, happier, and perform their jobs better.25

21 Ken Warner, “Wellness at the Worksite,” Health Affairs 9, no. 2 (1990): 63–79. Specifically, the worksite can offer peer support in encouraging compliance with difficult behavior-change regimens, as well as reduce time, financial, and travel barriers to wellness program participation. Id. at 65. Modifiable risk factors or “unhealthy lifestyles” drive up the prevalence of chronic disease, such as diabetes, heart disease, and chronic pulmonary conditions. Soeren Mattke et al., Workplace Wellness Programs Study (Final Report), RAND Health (2013): 1, http://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR254/RAND_RR254.pdf. Treating chronic disease accounts for more than 75 percent of national health expenditures. Id.

22 For resources on designing a successful wellness program, such as a results-oriented wellness program, visit www.welcoa.org. It is also important to consider each individual’s purpose to help them live a healthy life. For more information about the value of finding an individual’s purpose, see Victor J. Strecher, On Purpose (Ann Arbor, MI:1–133, Dung Beetle Press, 2013).


24 Id.

Third, over time, cumulative investment in well-being can reduce America’s need for sickness care, which is currently eating 17.4 percent of our country’s gross domestic product. The more we spend on sickness care, the less we are able to spend on other items important to the growth of our economy, such as education, transportation, agriculture, or even space exploration. Forming wellness habits early in an individual’s working years will likely translate to lower sickness care costs, because of delayed onset of disability later in life, also known as “morbidity compression.” Early research suggests that people who adopt healthy lifestyles during their working years delay the onset of disability, reduce the years of disability at the end of life, and increase their quality of life. Ultimately, a healthy, happy workforce helps U.S. employers stay competitive in the global marketplace.

So, how does the law play into all of this, and why should you not be scared of it? Because the law is an essential component of a well-designed workplace wellness program. You can “rule” workplace wellness “rules” by taking three steps: (1) learn about the rules; (2) be proactive about the rules; and (3) advocate for rule changes when necessary.

First, learning about which laws apply to workplace wellness, how they apply, and (arguably most importantly) why they apply helps workplace wellness program designers consider the needs and desires of the whole employee population. If one accepts the basic premise that laws exist for a reason and tries to learn about and understand that reason, the law can appear more friendly and less scary.

Second, being proactive about workplace wellness rules empowers you to use the law as a helpful tool in designing workplace wellness programs. People who view law as only a hindrance or afterthought often find themselves scrambling to defend their actions when someone complains. They may find themselves defending their actions against a boss, employee, auditor, government agency, or court. As in health care, in

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26 Centers for Medicare and Medicaid Services, “National Health Expenditures 2015 Highlights,” http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf. “Health expenditures” included those for hospital care, physician and clinical services, other professional services such as physical therapy, podiatry, or chiropractic medicine, dental services, residential and personal care services, home health care, nursing care facilities, prescription drugs, durable medical equipment, and other medical instruments. Id.

law it is far more expensive and emotionally tumultuous to react to problems than to prevent them in the first place. The law can be your guide in designing effective workplace wellness programs by helping you design programs that are more thoughtful, comprehensive, and sensitive. Proactive use of the law ultimately reduces legal risk.

Third, with knowledge you can advocate for law changes when necessary. Do not be a passive bystander. Take control of the law. Own it. Sometimes the law becomes outdated or fails to capture all circumstances. Each of us reading this book likely possesses expertise in and valuable perspectives on workplace wellness. It is important that you voice your concerns to your legislators when you encounter a situation in which existing law does not line up with reality. You can also express your concern to others involved in wellness advocacy efforts, such as my firm, the Center for Health and Wellness Law, LLC; or Health Promotion Advocates, a nonprofit advocacy group created to integrate health promotion into national health policy.28

This book aims to assist you in achieving these three steps. Each chapter contains an opportunity to apply the legal concepts discussed in the chapter through questions and answers, checklists, or other learning methods. Some of the issues raised in these applications are drawn from the wellness industry itself; others raise interesting issues that are important for workplace wellness design. Whenever possible, the book attempts to explain the “why” behind the law as well as the fact of the law. Knowledge of the law often removes fear of it. Understanding the “why” behind the law can foster a deeper appreciation of the law and, we hope, boost willingness to comply (or perhaps stimulate efforts to change the law if the “why” seems outdated).

Use this book as a resource. Embrace the law and embed it into your wellness program design. The law should not be a burden, but a selling point for your wellness program. By investing in compliance on the front end of your wellness program design, you will not only reduce the chance of lawsuits and investigations, but you will also add an element of confidence to your wellness program that will ease the minds of your company,

28 See http://healthpromotionadvocates.org/.
clients, and program participants. In sum, preventive legal compliance will make your wellness program that much more enjoyable and effective.

Be well, and Rule the Rules!

**JoAnn’s Perspective**

I was excited and honored when Barbara invited me to be a co-author of this much-needed book. I had started a similar book a few years ago and never got around to getting it done. Given Barbara’s exceptional background and experience in healthcare law and public health, I was confident that with her leadership this collaborative effort would meet an important need.

Over the last 20 years as an academician, I have taught both undergraduate and graduate level courses in (a) workplace wellness (courses that focus on the design and delivery of quality workplace wellness programs) and (b) legal/risk management (courses that focus on laws applicable to health/fitness programs and risk management strategies to minimize legal liability). The graduate students I have taught over the years, who are often employed as fitness and wellness professionals in various settings (worksite, medical/clinical, government, private for-profit, community nonprofit, and university), enter my legal/risk management course with little or no prior knowledge of the law and its application to the field. These students have graduated from academic programs from across the country in disciplines such as exercise science, health education, health promotion/wellness, public health, and business. Their lack of knowledge of the law and its application to the field is quite concerning given the many legal liability exposures that exist in the field. (Legal liability exposures are situations that can lead to both civil lawsuits and criminal charges, as discussed in Chapter 1.) In addition to minimizing legal liability, adhering to the law leads to high-quality programs and services as well as daily operational efficiency.

To provide a little more context related to workplace wellness, this section sets out some definitions that may be helpful. In a couple of these definitions, the term health promotion is used. Often the terms workplace wellness and workplace health promotion are used interchangeably...
in the literature. We will be using workplace wellness because it is the term used by the government in the published federal laws that we will be describing throughout the book. Several definitions of these terms are available in the literature, but I like these the best.

**Definitions**

**Comprehensive Health Promotion**
Goetzel et al.\(^{29}\) identify five key elements that define a comprehensive health promotion program: (a) health education, (b) links to related employee services, (c) supportive physical and social environments for health improvement, (d) integration of health promotion into the organization’s culture, and (e) employee screenings with adequate treatment and follow-up.

**Health Promotion**
Michael O’Donnell’s most recent definition of health promotion is: “Health promotion is the art and science of helping people discover the synergies between their core passions and optimal health, enhancing their motivation to strive for optimal health, and supporting them in changing this lifestyle to move toward a state of optimal health. Optimal health is a dynamic balance of physical, emotional, social, spiritual, and intellectual health. Lifestyle change can be facilitated through a combination of learning experiences that enhance awareness, increase motivation, and build skills and, most important, through the creation of opportunities that open access to environments that make positive health practices the easiest choice.”\(^{30}\)

**Health Education**
Health education is “any planned combination of learning experiences designed to predispose, enable, and reinforce voluntary behavior

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condusive to health in individuals, groups, or communities.” Note that this definition, by Green and Kreuter, refers to “voluntary” behavior. This concept of voluntariness is particularly relevant to our discussion, later in the book, of the topic of wellness programs; in some instances employees felt coerced to participate by having to pay large financial disincentives if they chose not to participate.

Wellness

The National Wellness Institute (NWI) defines wellness as “an active process through which people become aware of, and make choices toward, a more successful existence.” NWI identifies six dimensions of wellness—physical, social, intellectual, spiritual, emotional, and occupational—but there also can be additional wellness dimensions, such as financial and environmental. Wellness programs help people understand the interconnectedness among these dimensions and how to apply them into their lives.

By incorporating the dimensions of wellness into their design, quality workplace wellness programs focus on changing and sustaining behaviors (e.g., exercise, nutrition/weight management, tobacco cessation, stress management, injury prevention, and medical self-care) that help reduce the “need” and “demand” for medical services. Need is reduced through behavior change approaches (e.g., educating employees and their families on how to adopt a healthy lifestyle to prevent/control disease) and demand is reduced by self-management practices (e.g., educating employees and their families about how to properly access the healthcare delivery system through medical self-care programs). Health education programs should focus on both disease management strategies (e.g., helping people who are at risk for or who have chronic disease to reduce their risk factors or manage their disease to prevent further progression) and disease prevention strategies (e.g., helping healthy people stay healthy).

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33 Id.
Health promotion is a broader concept than health education. It includes health education as well as the environment as stated in the preceding definition by O’Donnell. Environmental factors in the workplace, such as organizational, regulatory, social, and policy matters, influence human behavior and are essential in both changing and sustaining behavior change. Workplace wellness programs that implement the key elements of a “comprehensive health promotion” approach will be the most effective in improving both individual and organizational health outcomes.

**Resources for Workplace Wellness Professionals**

It is important for workplace wellness professionals to be engaged in the profession. This is best achieved by becoming an active member of professional organizations, attending conferences, and reading professional journals. The following are my recommendations for three professional organizations. Visit their websites to learn more about their many membership benefits.

- International Association of Worksite Health Promotion (IAWHP): www.acsm-iawhp.org
- National Wellness Institute (NWI): www.nationalwellness.org
- Wellness Councils of America (WELCOA): www.welcoa.org

In addition, the annual Art & Science of Health Promotion conference covers many workplace wellness issues and topics. That conference is sponsored by the *American Journal of Health Promotion* (http://www.healthpromotionjournal.com).