Latest Case Involving Wellness Programs May Send EEOC Regulators Back To The Drawing Board

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09.13.2017

The Equal Opportunity Employment Commission (EEOC) issued regulations in 2016 establishing requirements that certain employer-sponsored wellness programs need to satisfy to be considered "voluntary" medical examinations, and thus not violate the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). Those regulations generally took effect as of January 1, 2017, but some employers had difficulty implementing the rules as they were inconsistent with regulations governing wellness programs under the Health Insurance Portability and Accountability Act (HIPAA). In particular, the EEOC regulations set a cap on wellness incentives at 30% of the cost of individual medical coverage—a limit that the EEOC deemed would make the program "voluntary" under the ADA and GINA. However, this cap was inconsistent with limits under the HIPAA regulations. In AARP v. EEOC, the United States District Court for the District of Columbia found that the 2016 EEOC regulations, in particular the 30% limit on wellness program incentives, lacked the justification necessary for the court to defer to the EEOC's interpretation of the ADA and GINA insofar as what it means for a medical examination to be "voluntary." As a result, the court chose to order the EEOC to revisit and revise the regulations. Due to the uncertainty regarding whether the EEOC will appeal the ruling, or how the regulations may be rewritten, employers should refrain from making any changes to wellness programs in response to the court's ruling until further clarification is available.

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