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Eleventh Circuit Affirms Wellness Program Complies with Americans with Disabilities Act

The United States Court of Appeals for the Eleventh Circuit upheld a lower court decision that a wellness program that requires employees of Broward County, Florida to fill out health risk assessments (HRAs) and submit to biometric screenings does not violate the Americans with Disabilities Act (ADA). Although some questions remain, this case could be a good sign for employers offering wellness programs that require HRAs and biometric screenings. Employers considering or already sponsoring wellness programs should discuss their particular plan designs with legal counsel to evaluate compliance with the ADA, as well as with other relevant laws, such as the health care reform law, HIPAA, the Genetic Information and Nondiscrimination Act (GINA), and state laws.

Background

Broward County offers a wellness program that requires employees to complete an HRA and take a biometric screening that measures glucose and cholesterol levels. Employees who refuse to participate in the program are subject to a $20 biweekly increase in health insurance premiums. Those who complete the HRA and screening and are diagnosed with certain health conditions - such as asthma, diabetes, kidney disease, or hypertension - can receive disease management coaching and certain free medications.

Employees filed a class action lawsuit against Broward County, arguing that the wellness program violates the ADA's prohibition on disability-related inquiries and medical examinations. The lower court ruled in favor of the employer, holding that the wellness program fits the ADA's safe harbor for bona fide benefit plans. According to the ADA, a bona fide benefit plan must be based on underwriting, classifying, or administering risks and not be a subterfuge for discrimination. The court concluded that the wellness program met this requirement because it was part of a group health plan and had the financial objective of enhancing the benefit plan's cost-effectiveness. Thus, it held that Broward County's wellness program does not violate the ADA.

Surprising many observers, the lower court did not address the question of whether the program met the ADA's "voluntary wellness program" exception, which was expected to be the deciding factor in the case. Under that exception, a wellness program must be "voluntary" if it asks disability-related

questions or requires a medical examination. The Equal Employment Opportunity Commission (EEOC), the regulatory agency with authority over the ADA, considers HRAs and biometric screenings to be subject to this provision. However, EEOC guidance does not clearly define what constitutes a voluntary wellness program. Historically, the EEOC questioned whether wellness programs that provide financial incentives, such as the $20 premium surcharge of the Broward County program, are voluntary. Employers, concerned that offering financial incentives (either a reward or a penalty) for completing an HRA or biometric screening would be considered involuntary under the ADA, hoped that the lower court would address this question. Instead, the lower court applied the ADA's bona fide benefit plan safe harbor to the Broward County arrangement and did not address the voluntary wellness program issue.

What this case means for employers

The Eleventh Circuit affirmed the lower court's ruling that the wellness program constitutes a bona fide benefit plan because it is part of a condition or "a term" under the County's group health insurance plan. Although this is a positive outcome for employers, questions - and risks - remain. This case does not bind courts outside the Eleventh Circuit (Alabama, Florida, and Georgia) or the EEOC to make similar rulings. So, for example, other courts could reject the bona fide benefit plan safe harbor and rule on the voluntary wellness program exception issue. In addition, employers need to confirm that their wellness programs comply with other applicable laws, such as the health care reform law, HIPAA, GINA, and state law. Since this compliance determination is highly fact-specific, it is essential that employers consult with their trusted advisors and legal counsel before finalizing a wellness program design.