

FYI[®] Alert

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Court Denies EEOC Request to Block Wellness Program

A federal judge in Minneapolis has denied the EEOC's request to block implementation of an employer's wellness program. The EEOC unsuccessfully sought a temporary restraining order and preliminary injunction, claiming the imposition of penalties or lost incentives violated both the ADA and GINA. The court rejected the EEOC's contention that employees would be irreparably harmed if the employer's wellness program moved forward in 2015, but stopped short of addressing the EEOC's likelihood of success as the case continues.

EEOC Action Continues

Last week, the Equal Employment Opportunity Commission (EEOC) asked the court to issue a temporary restraining order (TRO) and preliminary injunction blocking the implementation of penalties imposed on employees who decline participation in biometric testing under an employer's wellness program. The EEOC claimed that the imposition of such costs (or the loss of incentives) violates both the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). Following oral argument, the court denied the EEOC's request for a TRO, finding that the EEOC failed to show that employees would be irreparably harmed if the wellness program was implemented and that a balancing of the parties' interests did not establish the need for injunctive relief. Notably, the court did not address the EEOC's likelihood of success on the merits. Rather, the judge reportedly said that she wasn't ready to make even a preliminary determination. As this case and two other recent challenges to employer-sponsored wellness programs filed by the EEOC in Wisconsin continue to move forward, courts will have to grapple with a number of policy issues involving financial incentives and wellness programs. (See our [October 30, 2014 FYI Alert](#).)

Given the current enforcement climate and media attention, employers with wellness programs should carefully monitor these cases and confer with trusted advisors and legal counsel to assess any risks associated with their wellness program designs. Programs that provide larger financial incentives and/or penalties could be at greater risk of employee complaints, increased EEOC scrutiny, and possibly negative public attention. It's important to consult legal counsel to weigh the program design and potential benefits against the possibility of litigation and plan appropriate strategies. Given the lack of clear guidance from the EEOC, at this point, it might be impossible to have an effective yet risk-free wellness program.

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