

Court Modifies Order Regarding EEOC Wellness Rules What does this mean for Employer Wellness Programs?

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In late December, the Equal Employment Opportunity Commission (EEOC) issued two final rules removing wellness program incentives under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) with a January 1, 2019 effective date, creating more uncertainty for employers with wellness program incentives.

What Does This Mean for My Employer Sponsored Wellness Program?

Wellness programs are subject to numerous laws including the ADA, GINA and HIPAA. Any wellness program that requires an individual to undergo a medical exam, biometric screening or complete a health risk assessment (HRA) in order to receive the incentive has been viewed by the EEOC as subject to ADA/GINA incentive limits equal to **30% of the total cost of self-only coverage**.

With the ADA and GINA incentive limits vacated, less restricted ACA-amended HIPAA requirements will continue to apply; however, using these less restrictive incentive limits could may be risky because these regulations predated the EEOC's wellness regulations.

For 2019 and until the EEOC issues any new final rules regarding incentive limits, conservative employers should consider removing all incentives that require a medical exam, biometric screening, or health risk assessment. Those employers willing to take on moderate risk, should consider a lower incentive maximum and potentially incorporating alternative standards for achieving the incentive. Employers with higher risk tolerance levels can maintain current

incentives up to the 30% level; however, we recommend these employers evaluate their programs with legal counsel.

As always, please feel free to contact Sullivan Benefits for additional information or questions about your wellness program.

Other Resources:

[Court Modifies Order Regarding EEOC Wellness Rules](#) (United Benefit Advisors)