

WHAT YOU NEED TO KNOW



Court Modifies Order Regarding EEOC Wellness Rules

In August 2017, the United States District Court for the District of Columbia [held](#) that the U.S. Equal Employment Opportunity Commission (EEOC) failed to provide a reasoned explanation for its decision to adopt 30 percent incentive levels for employer-sponsored wellness programs under both the Americans with Disabilities Act (ADA) rules and Genetic Information Nondiscrimination Act (GINA) rules.

At that time, the court declined to vacate the EEOC's rules because of the significant disruptive effect it would have. However, the court remanded the rules to the EEOC for reconsideration.

In September 2017, the EEOC filed a status report indicating its schedule to comply with the court order, including issuing a proposed rule by August 2018 and a final rule by October 2019. It stated that it did not expect to require employers to comply with a new rule before 2021.

In December 2017, the court found the EEOC's process of not generating applicable rules until 2021 to be unacceptable. Instead, the court determined that one year was ample time for employers to adjust to new EEOC rules. The court [vacated](#) the EEOC rules under the ADA and GINA effective January 1, 2019, and ordered the EEOC to promulgate any new proposed rules by August 31, 2018.

In January 2018, the EEOC asked the court to reconsider the portion of the court's order that required the EEOC to promulgate new proposed rules by August 31, 2018. The court [vacated](#) that portion of its order. The court's order to vacate the portions of the EEOC's wellness rules under the ADA and GINA as of January 1, 2019, remains.

Current and Upcoming Impact on Employer Wellness Plans

- Employers are still subject to the EEOC's wellness rules, including the incentive limits, through 2018.
- If the EEOC does not promulgate new rules by the end of 2018, then the EEOC's incentive limit rules will not apply to employers' wellness programs starting on January 1, 2019. Employers would only be subject to HIPAA's more lenient incentive limits.