

WELLNESS PROGRAM UNCERTAINTY CONTINUES

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The US District Court for the District of Columbia recently ruled to vacate the Equal Employment Opportunity Commission (EEOC) wellness program regulations effective January 1, 2019. In August 2017, the same court ruled that EEOC had not provided a reasoned explanation for its decision to create regulations under the Americans with Disabilities Act (ADA) and Genetic Information Nondiscrimination Act (GINA) that set particular incentive levels for wellness programs. The regulations allowed employer-sponsored wellness plans to offer employees discounts of up to 30% of the cost of self-only health coverage for providing certain medical information, or to impose penalties of up to 30% for not doing so. The court found that EEOC “failed to adequately explain its decision to construe the term ‘voluntary’ in the ADA and GINA to permit the 30% incentive level adopted in both the ADA rule and the GINA rule.” However, to avoid disruption that would occur if the rules were vacated immediately, the court decided to remand without vacating the regulations “for the present.” In its most recent ruling on the matter, the court rejected the EEOC’s proposed 2021 timeline for implementing new regulations. Instead the court ruled that the effective date for vacating the current EEOC regulations will be January 1, 2019. Employers who sponsor wellness programs should continue to monitor developments in this area and conduct a review their wellness programs to determine if they implicate the current EEOC regulations. *AARP v. U.S. Equal Emp’t Opportunity Comm’n* (D.D.C 2017).