

Court Requires EEOC to Reconsider Wellness Program Regulations

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Generally, the Americans with Disabilities Act (the "**ADA**") and the Genetic Information Non-Discrimination Act ("**GINA**") permit employers to offer certain wellness programs if they are "voluntary." The EEOC issued regulations in 2016, which we discussed [here](#), permitting wellness programs to have incentives of up to 30 percent of the cost of health plan coverage in order to align with permitted incentives under the Health Insurance Portability and Accountability Act ("**HIPAA**"). The AARP sued the EEOC claiming that this 30 percent limit was still coercive and was contrary to the "voluntary" requirement under the ADA and GINA. The U.S. District Court for the District of Columbia granted AARP's motion for summary judgment, concluding that the EEOC failed to adequately explain its decision to interpret "voluntary" as permitting a 30 percent incentive level. Although governmental agencies are generally given deference, the "EEOC does not appear to have considered any factor that actually speaks to whether a given incentive level is voluntary or coercive." Therefore, the court concluded that the EEOC made its decision arbitrarily. The court declined to vacate the EEOC's wellness rules and instead remanded them to the EEOC for reconsideration. The bottom line is that employers at this time should continue to comply with the existing wellness program rules under the ADA and GINA but be aware of likely future developments. *AARP v. U.S. Equal Employment Opportunity Commission*, No. 16-2113 (D.D.C. Aug. 22, 2017) is available here: https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2016cv2113-47.