

Court Rules Against EEOC in Wellness Case Brought under the ADA

January 15, 2016

The EEOC brought civil actions against three separate employers (Orion Energy Systems, Inc.; Flambeau, Inc.; and Honeywell International, Inc.) in 2014 for alleged violations of the Americans with Disabilities Act (“**ADA**”) by their wellness programs. On December 30, 2015, a federal district court in Wisconsin ruled in *EEOC v. Flambeau, Inc.* that Flambeau’s requirement for employees to complete a health risk assessment and biometric screening in order to be eligible to enroll in the employer’s group medical plan fit within the ADA’s bona fide benefit plan safe harbor because it was a term of the plan for purposes of underwriting, classifying, and administering risk. The court determined the wellness program could be construed as part of the plan since it was a condition of enrollment, despite the fact that the wellness program was not described in the plan’s summary plan description. The application of the safe harbor was similar to and cites the approach taken by the 11th Circuit in *Seff v. Broward County*, 691 F.3d 1221 (11th Cir. 2012). The *Flambeau* court indicated it was not bound by proposed ADA regulations issued by the EEOC on April 20, 2015, which rejected the *Broward County* approach in their preamble. The EEOC is expected to appeal the *Flambeau* decision and to finalize the proposed ADA regulations in 2016, which may affect an employer’s ability to rely on the court decisions in *Broward County* and *Flambeau*. The *Flambeau* opinion can be found [here](#).