

EEOC Sues Employer Over "Involuntary" Wellness Program

September 8, 2014

The U.S. Equal Employment Opportunity Commission (the "EEOC") recently sued Orion Energy Systems, Inc. ("Orion"), a Wisconsin employer, for allegedly violating the Americans with Disabilities Act of 1990, as amended (the "ADA"), in connection with Orion's employee wellness program. Under this program, participants received a 100 percent subsidy on their health plan premiums while non-participants were required to pay the full cost. The EEOC charged that the Orion wellness program was not voluntary, and thus violated the ADA, because (1) it imposed a financial penalty for non-participation and (2) the sole non-participant was terminated from employment shortly after declining to participate in the program. EEOC guidance states that a wellness program is "voluntary" provided that participation is not required and the employer does not "penalize" employees who do not participate. However, the EEOC has not issued formal guidance regarding whether or to what extent an employer may offer financial incentives to encourage employees to participate in a wellness program. This case has not yet been resolved by a court. In light of this EEOC charge, employers should review the design and administration of their wellness programs for consistency with the ADA, as well as other applicable laws, including the Affordable Care Act, the Health Information Portability and Accountability Act, and the Genetic Information Protection Act.