

What You Need to Know

If no further action is taken by the EEOC, a federal judge has indicated that the “30% of premium safe harbor” portion of the EEOC’s ADA and GINA wellness regulations will be vacated as of 1/1/2019. What does that mean for employers? It depends.

Answer these questions to help you decide:

1. Does your incentive require the completion of an exam and/or require individuals to answer disability-related health questions?

If not, good news! The regulations don’t apply to all incentives, only incentives that require an exam or a disability inquiry and may cause the exam/inquiry to be deemed *involuntary* or *coercive*.

2. If you answered “yes” to #1, do you offer alternative ways for individuals to earn the full reward without having to complete the exam or answer the disability questions?

No changes are necessary as long as the alternatives are not overly burdensome. For example, you offer \$500 for completing a biometric screening or \$100 per completed health challenge or coaching course (up to 5). Even though \$500 was tied to an exam, the exam wasn’t required in order to earn the maximum incentive.

3. If you answered “no” to #2, are your incentives limited to individuals participating in your health plan and paid as a premium reduction or benefit adjustment, or are they offered to all employees and paid as compensation?

While not a guarantee of compliance with the ADA or GINA regulations, it has largely been accepted that incentives offered by the health plan to those who voluntarily enroll in the health plan, provided the incentives clearly comply with HIPAA and ACA wellness regulations, are far less at risk of legal or compliance concerns than those paid by employers to employees *outside* of a health plan. There is significant case law supporting employers/health plans in this context (pre-EEOC regulations). While there may still be risk, we believe it is substantially less than the risk related to incentives outside of the health plan.

4. If there is no appetite for even the potential risk within a health plan, employers should adjust to a plan as shown in example #2. Bravo offers online coaching programs, group challenges and individual well-being challenges that are engaging, require effort to complete and are proven to inspire positive change. Those who choose to complete a number of these programs instead of seeing their physician, completing a screening, or completing a health assessment will still reap meaningful value from the program.

Note: This checklist does not constitute legal advice. Employers and health plans are encouraged to review their specific program design with legal counsel.

LET'S TALK

For help evaluating your own plan, contact us toll-free at **877.662.7286**.

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