

Another Update to Wellness Regulations Reconsideration

DECEMBER 21, 2017

Yesterday, D.C. Federal Court Judge John Bates decided that the U.S. Equal Employment Opportunity Commission (EEOC) rules for incentivizing employees who participate in workplace wellness programs will be vacated on January 1, 2019.

As you may recall, in [October we mentioned](#), and referenced our [August of 2017 article](#), that wellness plans are currently under scrutiny. In *AARP v. United States Equal Employment Opportunity Commission*, Judge Bates had agreed with AARP that the EEOC did not adequately explain its reasoning for determining the 30% incentive level as a means of meeting the “voluntary” requirements of the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA), and remanded the regulations to the EEOC for reconsideration. At that time, he did not vacate the current rule in order to avoid potential “disruption and confusion” for existing wellness plans designed in accordance with the regulations. The EEOC told the judge that its “present intention” is to propose a new rule by August 2018 that incorporates GINA, the ADA along with other federal laws that regulate workplace wellness programs, and to issue a final rule by October 2019. The EEOC said that such amendments would likely not become effective until 2021.

On September 28, AARP asked Judge Bates to vacate the current rule on January 1, 2018, while criticizing the EEOC for its 2021 target for such amendments to go into effect. AARP’s argument is that vacating the current rule on January 1, 2018 would “prevent further harm to employees.” Yesterday, Judge Bates vacated the current EEOC rule effective January 1, 2019. His reasoning in doing so was that employers need to know the regulatory incentive structure for the following year by June or July, at the latest, so they have enough time to design and develop a compliant wellness program for the following year.

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[Amy Gordon](#)

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