

Court Allows Class Action Challenging Wellness Program Incentives to Continue

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Diment v. Quad/Graphics, Inc., 2024 WL 2939049 (N.D. Ill. 2024)

An employer-sponsored wellness program allowed participants in the employer's medical plan to receive a premium discount for completing a biometric screening and meeting certain standards for criteria such as blood sugar, blood pressure, and cholesterol. Upon enrolling in the medical plan, employees were given a grace period in which to decide whether to participate in the wellness program. The employees automatically received the premium discount, but if they did not elect to participate in the biometric screening, the premium increased by approximately \$34 per week when the grace period ended. Two employees affected by such an increase sued the employer on behalf of themselves and others, alleging that the wellness program violated the Americans with Disabilities Act (ADA) because participation involved a medical examination that was not "voluntary" as required by that law.

The employees argued that the increased premium was a significant penalty that coerced employees into participating in the screening, rendering the program involuntary. The employer argued that the increase represented the original costs of the premium and that employees choosing to undergo the screening merely received a discount. The court explained that the ADA does not include a definition of the term "voluntary" and that whether a program is voluntary is a question of fact. Concluding that the employees had sufficiently alleged that the program was involuntary, the court rejected the employer's request to dismiss the case, allowing the potential class action to continue.

EBIA Comment: The EEOC's rules governing wellness program incentives have remained in flux since the EEOC withdrew proposed regulations that were announced in 2021 but never published in the Federal Register. The timing and extent of further regulation is unclear, but guidance on the legal parameters of incentives would be welcome. In the meantime, employers sponsoring wellness programs should ensure compliance with existing rules under the ADA, GINA, and HIPAA. For more information, see EBIA's Consumer-Driven Health Care manual at Section VI.H ("Wellness and Disease-Management Programs: ADA Considerations") and EBIA's Group Health Plan Mandates manual at Sections XX.F ("ADA Considerations for Wellness Programs") and XXII.E ("GINA and Wellness Programs"). See also EBIA's HIPAA Portability, Privacy & Security manual at Section XI.I ("Wellness Programs Must Meet Specific Nondiscrimination Requirements") and EBIA's Self-Insured Health Plans manual at Section XIII.D.3 ("Nondiscrimination Rules' Interaction With Wellness Programs").

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