

Equal Employment Opportunity Commission: Updates for you to know

In 2016, the Equal Employment Opportunity Commission (EEOC) updated its regulations regarding wellness programs under both the Americans with Disabilities Act (ADA) and the Genetic Information Nondisclosure Act (GINA). Among other things, these regulations permit employer-sponsored wellness programs with maximum incentives of up to 30% for purposes of gathering employee or family health information.

In response to these regulations, AARP filed a lawsuit in the U.S. District Court in Washington, DC. In particular, AARP argues that the EEOC's permitted incentive maximum was arbitrary and unjustified (and, presumably, too high). The Court issued an order agreeing with AARP's position, and ordered the EEOC to reevaluate the rules. The EEOC proposed a timeline for new rules, committing to issuing a final rule by October 2019. Under this timeline, new rules would not take effect until the 2020 or 2021 plan year.

Two weeks ago, the Court issued another order, essentially instructing the EEOC to move more quickly. The Court ordered the EEOC to file a status report of its review of the rules by March 30, 2018, to issue any notice of proposed rule-making by August 31, 2018, and for rules to take effect for the 2019 plan year. More details will be known after the EEOC files its status report and we see the Court's response.

For the time being, the current incentive limits remain in place, and no immediate changes are required to wellness plan incentive limits.