



LEGISLATIVE BRIEF

Florida Court Holds Wellness Program Did Not Violate ADA

On April 11, 2011, a federal district court in Florida held that an employer’s wellness program did **not** violate the Americans with Disabilities Act (ADA) because the program fell under the ADA’s safe harbor for bona fide benefit plans.

This Benefit Management Solutions Inc. Legislative Brief summarizes the [court’s ruling](#) and provides some information on what it means for employers that offer wellness programs.

ADA Requirements

The ADA prohibits employers from discriminating against employees based on disability. As part of this prohibition, the ADA limits when an employer may obtain medical information from applicants and employees. Once employment begins, as a general rule, an employer may make medical inquiries or require medical examinations only if they are job-related and consistent with business necessity. However, according to the Equal Employment Opportunity Commission (EEOC), an employer may conduct medical examinations and activities that are part of a **voluntary** wellness program without violating the ADA, as long as medical records are kept confidential. A wellness program is considered voluntary if the employer neither requires employees to participate nor penalizes employees who decline to participate. Informal EEOC guidance suggests that a wellness program may not be considered voluntary if it includes a mandatory health risk assessment (HRA) or a penalty for non-participation.

Additionally, the ADA includes a safe harbor exception to many of its requirements, including the restriction on obtaining medical information, for bona fide benefit plans. The exception provides that the ADA does not prohibit or restrict an employer “from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.” The bona fide benefit plan exception may not be used as a subterfuge to avoid the ADA’s requirements. The EEOC has not formally addressed whether wellness programs that require participation or penalize employees for non-participation may fall under the ADA safe harbor exception for bona fide benefit plans.

The Court Ruling

In this case, the employer established a wellness program for its employees that included an HRA and a biometric screening. Participation in the wellness program was not required for health coverage through the employer. However, any employee who did not complete the wellness program incurred a \$20 charge per pay period. The employer received de-identified aggregate data from the wellness program to consider in creating future benefit plans. Employees who completed the program and who were identified by the employer’s insurer as having certain risk factors were given the opportunity to participate in disease management programs.



Florida Court Holds Wellness Program Does Not Violate ADA

A group of former employees sued the employer in federal court, alleging that the employer violated the ADA by offering a non-voluntary wellness program that required employees to participate to avoid paying the penalty. In its defense, the employer argued that the wellness program fell under the ADA's safe harbor for bona fide benefit plans.

The federal district court in the Southern District of Florida held that the wellness program did not violate the ADA because the program was a bona fide benefit plan under the ADA's safe harbor and was not used as a way to evade the ADA's requirements. Because the court concluded that the wellness program was protected under the ADA's safe harbor for bona fide benefit plans, the court did not address whether the program was permissible under EEOC guidance as a voluntary wellness program.

In concluding that the wellness program was a bona fide benefit plan, the court made the following conclusions.

- The wellness program was a term of the employer's group health plan because (1) the health plan insurer administered the program, (2) eligibility for the wellness program was limited to health plan enrollees and (3) a description of the wellness program was included in health plan handouts.
- The wellness program was "designed to develop and administer present and future benefit plans using accepted principles of risk assessment." Also, the employer initiated the wellness program for financial reasons rather than an altruistic desire for healthy employees.
- The wellness program was not designed to evade the purpose of the ADA. The program was beneficial to all employees, disabled and non-disabled.

What the Ruling Means for Employers

Wellness programs must be carefully structured to comply with various federal and state laws, including the ADA. Employers offering wellness programs that require medical information or otherwise penalize employees for non-participation will need to determine whether their program complies with the ADA.

The EEOC has indicated that a wellness program may not be considered voluntary if it includes a mandatory component or a penalty for non-participation. Although the Florida court in this case held that such a program was protected under the ADA's safe harbor for bona fide benefit plans, it is not clear whether courts in other jurisdictions would arrive at the same conclusion given a similar set of facts. It is also unclear whether the EEOC agrees with the Florida court's application of the ADA's bona fide benefit plan exception or will issue additional guidance regarding the interaction between wellness programs and the ADA.

Benefit Management Solutions Inc. will continue to monitor ADA developments and potential impacts on wellness programs.

This Benefit Management Solutions Inc. Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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