

WHAT YOU NEED TO KNOW



## Court Modifies Order Regarding EEOC Wellness Rules

Updated January 2019

In August 2017, the United States District Court for the District of Columbia [held](#) that the U.S. Equal Employment Opportunity Commission (EEOC) failed to provide a reasoned explanation for its decision to allow an incentive for spousal medical history and adopt 30 percent incentive levels for employer-sponsored wellness programs under both the Americans with Disabilities Act (ADA) rules and Genetic Information Nondiscrimination Act (GINA) rules.

At that time, the court declined to vacate the EEOC's rules because of the significant disruptive effect it would have. However, the court remanded the rules to the EEOC for reconsideration.

In September 2017, the EEOC filed a status report indicating its schedule to comply with the court order, including issuing a proposed rule by August 2018 and a final rule by October 2019. It stated that it did not expect to require employers to comply with a new rule before 2021.

In December 2017, the court found the EEOC's process of not generating applicable rules until 2021 to be unacceptable. Instead, the court determined that one year was ample time for employers to adjust to new EEOC rules. The court [vacated](#) the EEOC rules under the ADA and GINA effective January 1, 2019, and ordered the EEOC to promulgate any new proposed rules by August 31, 2018.

In January 2018, the EEOC asked the court to reconsider the portion of the court's order that required the EEOC to promulgate new proposed rules by August 31, 2018. The court [vacated](#) that portion of its order. In March 2018, the EEOC reported that it had not decided whether to promulgate new regulations. In December 2018, the EEOC issued a [final rule](#) that removes the incentive section of the ADA wellness rule vacated by the court. The EEOC also issued a [final rule](#) that removes the incentive section of the GINA wellness rule vacated by the court. Both final rules are effective on January 1, 2019.

### Current Impact on Employer Wellness Plans

For 2019 and until the EEOC issues any new final rules regarding incentive limits, risk-averse employers should consider discontinuing wellness programs that require a medical exam, biometric screening, or health risk assessment for participants to receive an incentive. While the ADA and GINA incentive limits

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do not apply beginning in 2019, the less restrictive HIPAA regulations will continue to apply. However, using these less restrictive incentive limits may be risky because these regulations predated the EEOC's wellness regulations.

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