

EEOC Cracking Down on Company Wellness Programs:

Is Your Company at Risk?

Summary

On October 1, 2014, the Equal Employment Opportunity Commission filed a lawsuit against the Wisconsin based plastics manufacturer, Flambeau Inc., over their company wellness program. The suit alleges that Flambeau, Inc. canceled an employee's medical insurance and shifted the entire premium cost onto the employee after he failed to complete a voluntary health-risk assessment and test under the company wellness plan. This is not the first suit that the EEOC has filed in federal court over wellness plans, as another suit was filed against Orion Energy Systems, Inc., who had also canceled an employee's benefits for failing to complete voluntary medical exams and answer disability related questions. In both suits, the EEOC asserts:

- a. Biological testing and health risk assessments are not job related or in line with business necessity.
- b. These tests were not truly voluntary under the American Disabilities Act as each employees suffered termination of their health insurance and the penalty of absorbing the entire cost premium for failure to comply.

What This Means For Your Company

As many employers continue to struggle with the soaring cost of healthcare, they are keen to try multiple strategies to reduce the impact. In a recent industry study, 39% of employers reported implementing or expanding wellness initiatives, while another 49% expect to do so within the next three years. Further, to increase participation, employers are using both incentives and disincentives. An additional 19% of employers are planning to add incentivized participation for company wellness programs in 2015.

The suits filed against Flambeau, Inc. and Orion Energy Systems, Inc. demonstrate that the EEOC is attempting to strictly enforce the ADA, as well as the status of "voluntary" health-risk testing as such. Plan sponsors need to be mindful when crafting their company wellness plans that test legislative limits and ensure that they are in compliance with all applicable laws. It is in the plan sponsor's best interest to refrain from aggressively testing the limits of the current regulations in place.

Next Steps

In today's business environment with the increased popularity of incentives and disincentives within wellness and other medical management programs, employers need to weigh the overall ROI of "pushing the limit".

As a general rule of thumb, companies who are leading edge and are willing to be early adaptors tend to reap the benefits, however until clearer guidance is provided by the various legislative bodies which govern employee benefit plans, it would be prudent to obtain an independent legal opinion.

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800-334-8048

Optimum Group, LLC

420 Lexington Avenue, Suite 428
New York, New York 10170
P: 212-652-1000
F: 212-652-1001
www.optimumgroup.com