

Class Action Challenge To Wellness Plan Incentives

By Dana Thrasher on March 21, 2011

A class action lawsuit is pending in federal district court in Florida alleging that an employer's wellness plan that charges a higher premium for employees who do not complete biometric screenings a health risk assessment violates the Americans With Disabilities Act (ADA) even though the wellness plan complies with with the requirements of ERISA and HIPAA.

The ADA generally prohibits employers from requiring employees to participate in medical examinations or health risk assessments to provide disability-related information but allows employers to establish "voluntary wellness programs" that solicit such information/participation. The issue is whether the financial "penalty" for not participating results in the program being "involuntary" and in violation of the ADA requirements (even though the financial incentive and structure of the wellness program otherwise satisfy the ERISA and HIPAA requirements for a wellness plan).

In the class action filed in the United States District Court for the Southern District of Florida (Seff v. Broward County, Case Number 0:10-cv-61437-KKM), the plaintiffs allege that the additional charge of \$20 per bi-weekly pay period for employees who do not participate in the biometric screenings or health risk assessment violates the ADA. Employers and wellness plan vendors will anxiously await the court's decision in this case as a finding that wellness plans providing such penalties violate the ADA would significantly impact many employer-provided wellness programs.

Constangy, Brooks & Smith, LLP has counseled employers on labor and employment law matters, exclusively, since 1946. A "Go To" Law Firm in Corporate Counsel and Fortune Magazine, it represents Fortune 500 corporations and small companies across the country. Its attorneys are consistently rated as top lawyers in their practice areas by sources such as Chambers USA, Martindale-Hubbell, and Top One Hundred Labor Attorneys in the United States, and the firm is top-ranked by the U.S. News & World Report/Best Lawyers Best Law Firms survey. More than 130 lawyers partner with clients to provide cost-effective legal services and sound preventive advice to enhance the employer-employee relationship. Offices are located in Alabama, California, Florida, Georgia, Illinois, Massachusetts, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Virginia and Wisconsin. For more information, visit www.constangy.com.