

LEGAL UPDATE

Proposed Rules on Wellness Program Incentives Withdrawn

On Feb. 12, 2021, the Equal Employment Opportunity Commission (EEOC) withdrew two proposed rules it previously issued in January 2021, on wellness programs under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA).

Overview of the Proposed Rules

These proposed rules were issued in response to a federal court decision that vacated a portion of EEOC regulations describing the incentives that an employer could offer:

- Under the ADA as part of wellness programs that ask about employees' health and/or ask them to undergo medical examinations; or
- Under GINA to an employee whose spouse provides information about the spouse's manifestation of disease or disorder as part of a wellness program.

The proposed rules would have generally allowed only *de minimis* incentives to be offered for wellness program participation. Exceptions allowing larger incentives would have applied to health-contingent wellness programs that are part of, or qualify as, group health plans under the ADA rules.

Withdrawal

These proposed rules were withdrawn because they were not published by Jan. 20, 2021, the time of President Joe Biden's inauguration. Upon inauguration, the president issued a memorandum requiring all agencies to immediately withdraw any proposed rules that had not yet been published.

As a result, the next steps for these proposed rules are currently under consideration by the EEOC. This means that significant confusion remains for employers regarding what incentives, if any, they may offer employees.

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Highlights

- The EEOC removed the incentive limits from prior final rules, effective Jan. 1, 2019, due to a court ruling that invalidated the limits.
- The proposed rules would have established a *de minimis* incentive limit to be offered for wellness program participation.
- The next steps for these proposed rules are currently under consideration.

These rules were withdrawn due to a Jan. 20, 2021, White House memorandum requiring all unpublished proposed rules to be withdrawn.



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