

## Yale University's Wellness Program Faces Class-Action Lawsuit: *Could Your Workplace Wellness Program Be Next?*

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### Yale University Lawsuit

Yale University employees recently filed a class-action [lawsuit](#) alleging that the school's workplace wellness program violates the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). The wellness program requires all employees and their spouses to submit to medical testing and to release insurance claims information to wellness vendors. Employees who choose not to participate in the wellness program receive a yearly penalty of \$1,300.

The lawsuit alleges that the penalty is so substantial that it essentially makes the wellness program mandatory, which violates both the ADA and GINA. Under the ADA and GINA, employers may collect health and genetic related information for the purposes of a wellness program, so long as the information is **voluntarily** given by employees. Ultimately, the court will be deciding whether or not the \$1,300 penalty is so substantial that it effectively makes participation in the program mandatory as opposed to voluntary.

### The EEOC & Wellness Program Incentives

In 2016, the EEOC released [final regulations](#) regarding workplace wellness programs that require medical testing and/or the release of health and genetic information. The regulations allowed employers to provide incentives or impose a penalty to encourage participation in a wellness program, so long as the cost of the penalty or reward did not exceed 30% of the total cost of self-only coverage. Ultimately, the EEOC determined that wellness programs requiring medical testing that offer incentives or impose a penalty within this limit would still be viewed as "voluntary" programs and therefore not in violation of the ADA or GINA.

In 2016, the AARP filed a [lawsuit](#) against the EEOC challenging these regulations. The EEOC regulations were ultimately overturned by the courts in 2017 and the EEOC was required to issue new regulations with regard to incentives.

Unfortunately, the EEOC has yet to release [new regulations](#). As a result, there are no rules or regulations that employers are able to use when determining whether or not they should offer incentives or impose penalties with regard to their workplace wellness programs.

### What this means for YOUR Wellness Program

Currently, it is unclear when the EEOC will be releasing new regulations regarding incentives and penalties. Without guidance from the EEOC, it is recommended that employers take a more conservative approach to wellness programs that require medical testing—limiting incentives and penalties or not including them in the program at all—to avoid any potential lawsuits.

If you have any questions regarding this topic, please contact me at [adillingham@benefitreview.com](mailto:adillingham@benefitreview.com)

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