

November 5, 2018

EEOC Guidance on Wellness Plans...Still Waiting

Employers waiting for new guidance on wellness plan incentives from the Equal Employment Opportunity Commission (EEOC) are going to have to wait a little longer.

In December 2017, the United States District Court for the District of Columbia issued a ruling in *American Association of Retired Persons (AARP) v. EEOC* that vacated the portion of the EEOC regulations that limit wellness incentives under the Genetic Information Non-Discrimination Act (GINA) and the Americans with Disabilities Act (ADA). While the court pressed the EEOC to issue revised regulations in a timely manner, the EEOC has not taken quick action to establish the wellness incentive rules. The current EEOC's regulatory agenda is set to draft guidance by June 2019. Given the typical timeline of issuance of proposed regulations, a period for public comments, followed by the issuance of final regulations, it may be years before we have clarity on permissible wellness plan incentives under the ADA and GINA.



It's important to note that timing for vacating the existing EEOC regulations on the wellness incentives—January 1, 2019—has not changed.

As the holding pattern continues, employers may wish to review their incentives to determine whether any changes are warranted as the existing wellness plan incentive “safe harbor” is vacated.