

## Be Prepared: Changes to Workplace Wellness Programs Coming in 2019

Article By:

General Employment Litigation Practice Group Jackson Lewis

---

Though still a year away, employee health plans are in for significant change beginning January 1, 2019. This modification is the result of a longstanding argument about plan administration. In October 2016, the AARP sued the Equal Employment Opportunity Commission (EEOC), arguing that the regulations interpreting the Americans With Disabilities Act and Genetic Information Nondiscrimination Act include financial incentives or penalties that are discriminatory and penalize employees who do not want to provide health-related information but are being compelled to do so (rather than disclosure being voluntary) by the incentives or penalties. The provisions currently allow employers to ask questions relating to medical history of employees and employees' spouses, and potentially require employees to undergo medical exams to participate in the program. The rules also allow employers to provide limited incentives to employees who choose to participate. Under the current regulations, incentives are capped at thirty percent of the total cost for self-only coverage for employees who are enrolled in a wellness program, but alternatively allow a penalty of up to thirty percent for those who refuse to participate in the program.

In December 2017, U.S. District Court for the District of Columbia ordered the EEOC to eliminate the portion of these rules that included the use of these financial incentives and penalties in the wellness plans, effective January 1, 2019 (*AARP v. U.S. Equal Emp't Opportunity Comm'n*, Civ. No.: 16-2113). According to the court, doing so in 2018 would cause mass disruption to the workplace, but leaves "plenty of time for employers to develop their 2019 wellness plans with knowledge that the Rules have been vacated." Additionally, the Court encouraged the EEOC to draft new rules consistent with this ruling by August 2018. In the meantime, employers should begin to review and adjust their current wellness plans, as the EEOC estimates that businesses will need at least six months to adjust to a change.

*Fatima M. Guillen-Walsh contributed to this post.*

Jackson Lewis P.C. © 2025

---

National Law Review, Volume VIII, Number 5

Source URL: <https://natlawreview.com/article/be-prepared-changes-to-workplace-wellness-programs->

[coming-2019](#)