

EEOC Sues Employer That Required Employee To Complete A Health Risk Assessment

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In order to manage and control rapidly rising healthcare costs, many employers have implemented wellness programs in order to educate employees and encourage greater health awareness. A common feature to most wellness programs includes an annual health risk assessment. Oftentimes, employees are incentivized to complete the assessment either through reduced premium costs or gift cards. In fact, the Affordable Care Act specifically authorizes employers to offer financial incentives for employees to participate in wellness programs, in general, and complete health risk assessments, specifically.

While the “carrot” approach is permissible, employers may run afoul of the Americans with Disabilities Act (ADA) if they resort to use of the “stick.” When a Wisconsin employer required its employees to complete the health risk assessment, one employee questioned whether or not the assessment was voluntary. After raising this question, the employee was called into a meeting with HR and was told to not voice her opinion about the assessment with her coworkers and to correct her “attitude” toward the wellness program initiatives.

After the employee later refused to complete the health risk assessment, the employer then required her to pay the entire premium cost for single coverage for health insurance, which in turn would cost the employee over \$400 a month. The employee was also assessed a \$50 a month penalty for failing to participate in the wellness program. Within a month of her refusal to complete the assessment, the employee was terminated.

In *EEOC v. Orion Energy Systems, Inc.*, the Equal Employment Opportunity Commission (EEOC) sued the employer under the ADA. First, the EEOC alleges in its suit that requiring an employee to complete the health risk assessment violated the ADA prohibition against unlawful medical inquiries because the health inquiries the employee would have to answer were not job-related or consistent with business necessity. Second, the EEOC alleges in its suit that penalizing an employee for failing to participate in a wellness program additionally violated the ADA. Finally, the EEOC alleges the employer unlawfully retaliated against the employee after she questioned the nature of the program by chastising her for her “attitude,” instructing her not to discuss her concerns with her co-workers and ultimately terminating her employment.

While certainly maintaining and encouraging wellness programs, including comprehensive health risk assessment initiatives and other wellness initiatives are important and invaluable to controlling and minimizing the increasing healthcare cost for employers and employees, employers need to be careful in terms of how they communicate the purpose and intent of such programs to employees. Participation must be voluntary and employers need to avoid any express or inferred expectation that all employees must participate and complete any assessments. Carrots are good and sticks are bad.

By Tom Berry