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EMPLOYER LAW BLOG

Federal Court Rejects EEOC Request to Enjoin Honeywell Wellness Program

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As discussed in an earlier blog article, the EEOC takes a dim view of employer wellness programs to the extent they "encourage" participation through monetary penalties. As part of its wellness program, Honeywell encouraged employees and their dependents to participate in a biomedical test which would analyze a blood sample for, among other things, cholesterol, glucose and nicotine levels. The actual test results would be reviewed by an independent company which, in turn, would only report aggregate data to Honeywell rather than having individual health data.

If an employee declined to participate in the biomedical test, their annual health insurance cost would increase by $500. Additionally, those employees who smoke were also subjected to an increased $1,000 annual surcharge. For those employees who declined to participate in the biomedical testing process, they would be presumed to be smokers and would be subject to the same nicotine surcharge.

In *EEOC v. Honeywell International, Inc.*, the EEOC requested a federal judge in Minnesota to issue an injunction preventing Honeywell from charging either the annual surcharge or the tobacco surcharge to any employee who declined to participate in the biomedical test. By imposing surcharges for those employees who declined to participate, the EEOC argued that the wellness program was no longer voluntary and, as such, constituted an unlawful medical inquiry under the Americans with Disabilities Act (ADA). In defense, Honeywell argued that the surcharges were explicitly permitted by the Affordable Care Act (ACA) and argued that the EEOC's arguments were contrary to the ACA.

Ultimately, the federal judge declined to issue the requested injunction in favor of the EEOC and refused to order Honeywell to stop charging the annual insurance surcharges. While declining to issue the requested injunction, the federal judge emphasized that the EEOC could still continue its investigation and the judge was not expressing a final decision on the merits of whether or not the surcharges were permissible under the ADA in light of the separate ACA provisions. While recognizing that the wellness program developed by Honeywell serves significant public policy in raising employee awareness of important health indicators, as well as attempting to reduce overall healthcare costs, the court left for another day a final decision on the merits. Consequently, employers need to be mindful that the EEOC will likely continue to take a dim view of wellness programs that condition participation on the avoidance of penalties or surcharges versus participation incentives.