Wellness Program's Medical Exam Requirement Does Not Violate ADA

DISCRIMINATION

The U.S. District Court for the Eastern District of Wisconsin finds that the defendant employer did not violate the Americans with Disabilities Act (ADA) by requiring employees to complete a medical examination through a wellness program in order to have their health insurance premiums waived.

The plaintiff was the Equal Employment Opportunity Commission (EEOC). The defendant was a lighting manufacturer that employed approximately 250 individuals.

In 2008, the defendant switched from an insured health plan to a self-insured health plan. The defendant also offered a voluntary wellness initiative in which employees who enrolled in the health plan would have to pay a surcharge for certain behaviors such as smoking. They also could have their insurance premiums waived if they agreed to an annual health risk assessment (HRA). The information obtained from the HRA was anonymous but allowed the defendant to identify common health issues and offer employees educational tools to improve their health.

One employee refused to participate in an HRA and openly criticized the wellness program. In addition, she sent an e-mail criticizing the chief executive officer's extravagant spending decisions on a variety of projects. Her employment was terminated several days after the e-mail was sent.

The court notes that ADA was aimed at eliminating disability-based discrimination in the workplace and prohibits employer-required medical examinations and inquiries, unless such examination or inquiry is shown to be job-related and consistent with business necessity. However, ADA permits employers to conduct voluntary medical examinations as a part of an employee health program.

The employee contended that the HRA was not voluntary because the defendant shifted 100% of the health benefit premiums to employees who opted out of taking the HRA. She also claimed the defendant retaliated against her for opting out of the wellness program when she was fired three weeks later.

The defendant argued that the wellness initiative fell under ADA's insurance safe harbor that provides that the law shall not prohibit or restrict a self-insured organization from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan. In addition, the defendant claimed the wellness program was confidential and voluntary because its employees had a choice regarding their participation and sufficient time to make the choice.

The court finds that although the wellness program did not fall under ADA's safe harbor protection, the wellness program was wholly independent from the health plan because participation was not a condition for participation in the health plan. Therefore, the court finds that the defendant was entitled to summary judgment as to the plaintiff's claim that the wellness program violated ADA.

The defendant argued that the plaintiff's retaliation and interference claims failed because the employee was not engaged in any protected activity by complaining about aspects of the program that were lawful and that there was no causal connection between her refusal to participate and her termination of employment.

However, the court finds that a question of fact remains as to whether there was any causal link between the employee's protected activity and her termination, given the timing of her termination and who made the decision to terminate her employment.

Therefore, the court denies the defendant's request for summary judgment as to the plaintiff's retaliation and interference claims, but grants summary judgment as to the legality of the wellness program's terms.

Equal Employment Opportunity Commission v. Orion Energy Systems, Inc., No. 14-cv-1019 (E.D.Wis. September 19, 2016).