



Employment Law Alert

Legal developments affecting human resource management

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EEOC: health risk assessment violates ADA

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In a recent informal opinion letter, the Equal Employment Opportunity Commission (“EEOC”) held that an employer violated the Americans with Disabilities Act (“ADA”) when it required employees to undertake a health risk assessment (“HRA”) as a condition of participating in the employer’s group health plan.

The official inquiry concerned a county that had implemented an HRA which included answering a short health-related questionnaire, taking a blood pressure test, and providing blood for use in a blood panel screen. Employees declining to participate in the program (and members of their families) were ineligible for coverage under the employer’s self-funded health plan. Specific information from the health risk assessment went only to the employee, and the employer only received aggregated information.

The opinion letter reiterated the well-established principle that, once employment begins, an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity. The EEOC determined that requiring all employees to take this HRA that includes disability-related inquiries and medical examinations as a prerequisite for obtaining group health coverage does not appear to be job-related and consistent with business necessity, and therefore it would violate the ADA.

The EEOC noted that disability-related inquiries and medical examinations are permitted as part of a voluntary wellness program. A wellness program is considered voluntary only if employees are not required to participate and are not penalized for non-participation. With regard to the HRA, an employee’s decision not to participate resulted in the loss of the opportunity to obtain health coverage through the employer’s plan. Thus, even if the HRA could be considered part of such a wellness program, the program would not be voluntary because individuals who do not participate in the assessment are denied a benefit (i.e., they are penalized for non-participation).

While this informal opinion by the EEOC does not create binding law, employers should be cognizant of the positions taken by the EEOC in such letters.

If you would like more information about the topics covered in this *Alert*, please contact your Nixon Peabody attorney or:

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