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Wellness Benefits Case Arising Before the 2016 ADA Regulations Is Dismissed

The debate on the interaction between wellness programs, the ADA prohibition on involuntary medical exams and the ADA safe harbor relating to employee benefit plans will not be clarified. Last week, the U.S. Court of Appeals for the 7th Circuit upheld the lower court's dismissal of the case, EEOC v. Flambeau, Case No. 3:14-cv-00638-bbc. The 7th Circuit dismissed the EEOC's case against Flambeau on the basis that it was moot – the employer had dropped its mandatory wellness program which included biometric screenings as a condition for enrolling in its subsidized health benefits, and there had been no harm to the employee.

It is important to note that the questions presented in this case arose before the new EEOC regulations were issued, so even if the case had been decided on its merits, it would have had limited applicability. Under the 2016 final regulations, medical exams conducted in connection with a wellness program are deemed voluntary under the ADA if certain requirements are met, including a limit on incentives to no more than 30% of total cost of "self-only" health coverage. However, the court did not reach the question as to whether the statutory "insurance" exception applies to wellness programs – leaving that aspect open for future courts.