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11th Circuit Upholds Broward County

Yesterday, the US Court of Appeals for the 11th Circuit upheld summary judgment in favor of the employer in Seff v. Broward County. This was a case that has been intensely watched due to the implications for wellness plans.

In the Broward County case, Broward offered a wellness program sponsored by Broward's group health insurer. The employee wellness program consisted of two components: a biometric screening, and an "online Health Risk Assessment questionnaire." The insurer used information gathered from the screening and questionnaire to identify Broward employees who had one of five disease states: asthma, hypertension, diabetes, congestive heart failure, or kidney disease. Employees suffering from any of the five disease states received the opportunity to participate in a disease management program. Participation in the employee wellness program was not a condition for enrollment in Broward's group health plan. But, to increase participation in the employee wellness program, Broward imposed a $20 charge beginning on each biweekly paycheck issued to employees who enrolled in the group health insurance plan but refused to participate in the employee wellness program.

An employee then brought suit under the Americans with Disabilities Act (ADA), alleging that the employee wellness program's biometric screening and online Health Risk Assessment violated the ADA. The District Court ruled in favor of the employer, and the 11th Circuit upheld this ruling based on the safe harbor provision of the ADA. The safe harbor provision states that the ADA "shall not be construed" as prohibiting an employer "from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law." In reaching its conclusion, the 11th Circuit found that the employee wellness program qualified as a "term[] of a bona fide benefit plan" within the meaning of the safe harbor provision because the employee wellness program constituted a "term" of Broward's group health plan.

While this is certainly a welcome ruling for employers, it is important to note that this is a case of first impression. While the 11th Circuit has ruled favorably for employers on this issue, other circuits may not follow the 11th Circuit's lead. Thus, employers and group health plan sponsors should review this case and make necessary changes to their plan documents and SPDs to fit squarely within the ADA exception.