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Participants Sue Wellness Program

Last week a federal district court in Florida certified a class action against Broward County Florida's health plan. The class action alleges that the plan's wellness program violates the Americans with Disabilities Act (ADA) by charging employees a $20 bi-weekly surcharge for not participating in a wellness program. The wellness program required biometric testing (glucose and cholesterol) and completion of an online health risk assessment. If participants did not complete the testing and health risk assessment, participants were charged a $20 bi-weekly surcharge. While these kinds of programs are allowed under HIPAA and ERISA (subject to certain requirements), the EEOC has been mostly silent with respect to the ADA implications. However, last year the EEOC issued a ruling providing that a health risk assessment cannot be mandatory under the ADA.

A certification is located at the following link: http://www.courthousenews.com/2010/08/11/Govt.pdf