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Florida Court Upholds ADA "Safe Harbor" in Broward County Wellness Program Case

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In a decision filed April 11, 2011, the Southern District of Florida granted an employer health plan's motion for summary judgment in a case brought by a former plan participant who claimed that the health plan's wellness program violated the Americans with Disabilities Act ("ADA"). Seff v. Broward County (S.D. Fla. Apr. 11, 2011). This case is significant in that it has been unclear whether wellness programs and health risk assessments ("HRAs") that otherwise comply with the HIPAA wellness rules (particularly those that are mandatory or involve penalties) would be permitted under the ADA. Employers and insurers have long been concerned about an ADA provision that prohibits employers from imposing mandatory medical examinations and its possible application to wellness programs.

The EEOC, which administers the ADA, has questioned whether an HRA or a wellness program that is mandatory or involves a penalty for failing to participate (as opposed to a reward for participation) would be permitted under this provision. However, the EEOC has not issued formal guidance. On Monday, the Southern District of Florida found that the ADA prohibition does not apply to a wellness program offered by an employer health plan where the program meets the ADA's safe harbor for bona fide benefit plans.

Please view the memo below for a summary of the ADA provision and Broward County case. The order is also attached.

Seff OrderDownload

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