



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- The ADA applies to employer-sponsored wellness plans that ask for health information or include medical exams.
- The EEOC is expected to issue new rules addressing permissible incentives for wellness plans.
- In the meantime, employers should be careful about structuring incentives for wellness programs that are subject to the ADA.

## IMPORTANT DATES

### January 1, 2019

District court's ruling to vacate incentive limits under the EEOC's final wellness rules takes effect.

### December 2019

EEOC indicated that it will issue new proposed rules on wellness plan incentives.

## Provided By:

National Insurance Services,  
Inc.

## EEOC Expected to Publish New Wellness Rules in 2019

### OVERVIEW

The Equal Employment Opportunity Commission (EEOC) recently [announced](#) its plans to issue new proposed rules on permissible wellness incentives under the Americans with Disabilities Act (ADA) by the end of 2019.

In May 2016, the EEOC issued [final rules](#) addressing how the ADA applies to employer-sponsored wellness programs. The final rules included a 30% limit for wellness incentives. A federal court [vacated](#) this incentive limit, effective Jan. 1, 2019. Consistent with this court ruling, the EEOC [removed](#) the incentive limit from its final wellness rules.

The EEOC was expected to issue new proposed rules by June 2019, but the rules have been delayed. The EEOC's spring regulatory agenda includes a deadline of December 2019 for the proposed rules.

### ACTION STEPS

Until the EEOC issues new wellness rules, employers should carefully consider the level of incentives they use with their wellness programs. Employers should also watch for any developments related to the EEOC's wellness rules.

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## Final Wellness Rules

Under the ADA, an employer may make disability-related inquiries and require medical examinations after employment begins only if they are job-related and consistent with business necessity. However, these inquiries and exams are permitted even if not job-related and consistent with business necessity if they are part of a **voluntary wellness program**.

The ADA does not define the term “voluntary” in the context of wellness programs. For many years, the EEOC did not definitively address whether incentives to participate in wellness programs are permissible under the ADA and, if so, in what amount. On May 17, 2016, the EEOC issued [final rules](#) that describe how the ADA applies to employer-sponsored wellness programs. These rules became effective on **Jan. 1, 2017**.

The EEOC’s final rules restricted incentives offered to an employee who answers disability-related questions or undergoes medical examinations as part of a wellness program. The restriction was **30 percent** of the total cost for self-only health plan coverage.

### *Incentive Limits Removed From Final Rules*

Effective Jan. 1, 2019, the EEOC [removed](#) the incentive limits from its final wellness plan rules to implement a court’s order that [vacated](#) that portion of the final rules.

## New EEOC Rules

The EEOC has indicated that it will publish new proposed rules on employer-sponsored wellness programs in the future. These proposed rules are expected to provide guidance to employers on the permissible incentive limits for wellness plans that ask for health information or include medical exams.

It is not clear, however, when these proposed rules will be released. The EEOC’s regulatory agenda from Fall 2018 stated that the rules would be issued by June 2019. However, the EEOC’s [Spring 2019 regulatory agenda](#) includes a deadline of December 2019 for these new rules.

It is likely that this delay has been largely attributable to the status of the EEOC’s membership. The EEOC, a bipartisan commission comprised of presidentially appointed members, has been waiting for the confirmation of two members (including a commission chair) and a general counsel. On May 15, 2019, the EEOC’s new chair, [Janet Dhillon](#), was sworn in, making it more likely that the EEOC will issue new wellness rules in 2019. However, it is possible that the wellness rules will continue to be delayed.