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ADA and GINA: The Regulatory Gap**

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# Permitted Incentives for Workplace Wellness Plans Under the ADA and GINA: The Regulatory Gap

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## **Abstract**

Although workplace wellness plans have been around for decades, they have flourished under the Patient Protection and Affordable Care Act (“PPACA”) into a \$6 billion-dollar industry. Under PPACA, a “wellness plan” is a program of health promotion or disease prevention offered by an employer that is designed to promote health or prevent disease and which meets the other applicable requirements of that subsection. Employers look to these programs to promote healthy lifestyles, improve the overall health of employees and beneficiaries, and reduce rising healthcare costs. PPACA’s amendments to the Health Insurance Portability and Accountability Act (“HIPAA”) permit employers to offer significant incentives to employees for plan participation.

These new incentives are seen as in tension with the nondiscrimination requirements of the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”), which protect against disclosure of certain medical information. In 2016, the Equal Employment Opportunity Commission (“EEOC”) issued new wellness plan regulations under the ADA and GINA designed to resolve this tension, which became applicable January 1, 2017. However, the portions of the regulations addressing permitted incentives were quickly and successfully challenged in court and vacated effective January 1, 2019. This article provides an overview of regulation of workplace wellness plans by these laws, discusses the 2017 lawsuit challenging the EEOC’s regulations, and identifies legal and regulatory issues to consider in light of the regulatory gap.

**Keywords:** wellness plans, Americans with Disabilities Act, ADA, Genetic Information Nondiscrimination Act, GINA, Affordable Care Act, ACA

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