Brown & Brown

EMPLOYEE BENEFITS

# Yale Agrees to $1.29 Million Settlement Over Health Expectations Program

**Yale University has agreed to a settlement with its employees in a class-action lawsuit over its Health Expectations Program, originally filed in July 2019. Yale will pay $1.29 million to resolve the claims made in the lawsuit and has agreed to stop collecting a $25 per week fee for workers who opted out of its Health Expectations Program or did not fulfill the program's requirements. Finally, the settlement will require Yale to modify how genetic and disability-related information is currently stored and shared under its program. At the time of this publication, the settlement is pending court approval.**

Since this case was settled prior to the court ruling on its merits, it is unknown whether the court would have agreed that Yale's Health Expectations Program was problematic under the ADA and the GINA. However, the fact that Yale has agreed to such a large settlement should act as a reminder that employers must continue to work with their legal counsel to examine the nature of this lawsuit and any potential impacts to their wellness plans that may result from this settlement.

## Background

The Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) generally prohibit employers from requiring employees to submit to medical examinations or disability-related inquiries or provide genetic information. However, both regulations permit employers to request this information if the requests are made under a voluntary wellness program. The Equal Employment Opportunity Commission (EEOC) finalized rules in 2016 to provide a framework for employers to use when designing wellness programs to verify that the programs were considered voluntary and in compliance with the ADA and the GINA.

Under these final regulations, employers were permitted to offer financial incentives to employees to submit to medical examinations or disability-related inquiries or to provide genetic information if the incentives fell within specified limits.

However, the American Association of Retired Persons (AARP) filed a lawsuit claiming that the EEOC's final rules were arbitrary and that compliance with the incentive levels specified in the rules did not guarantee that participation in wellness programs that were modeled after these rules would be voluntary, as the incentives would still be financially coercive to employees. The United States District Court for the District of Columbia agreed with the AARP, and the portion of the final wellness rules outlining permissible reward amounts were invalidated effective January 1, 2019. Since that time, there have been no clear standards establishing whether or to what extent incentives can be offered to employees to submit to medical examinations or disability-related inquiries or to provide genetic information while maintaining the voluntary status of the wellness program.[1]

*[1] In January 2021, the EEOC issued new proposed rules which would have reestablished a standard for voluntary wellness programs and permissible incentive limits. The 2021 proposed rules significantly restricted the ability of employers to offer significant financial incentives to employees for submitting to medical examinations or disability-related inquiries or providing genetic information as compared to the 2016 final rules. Yet, the proposed rules did provide clear guidance as to when these types of incentives would be permitted. However, the proposed rules were withdrawn by the EEOC.*

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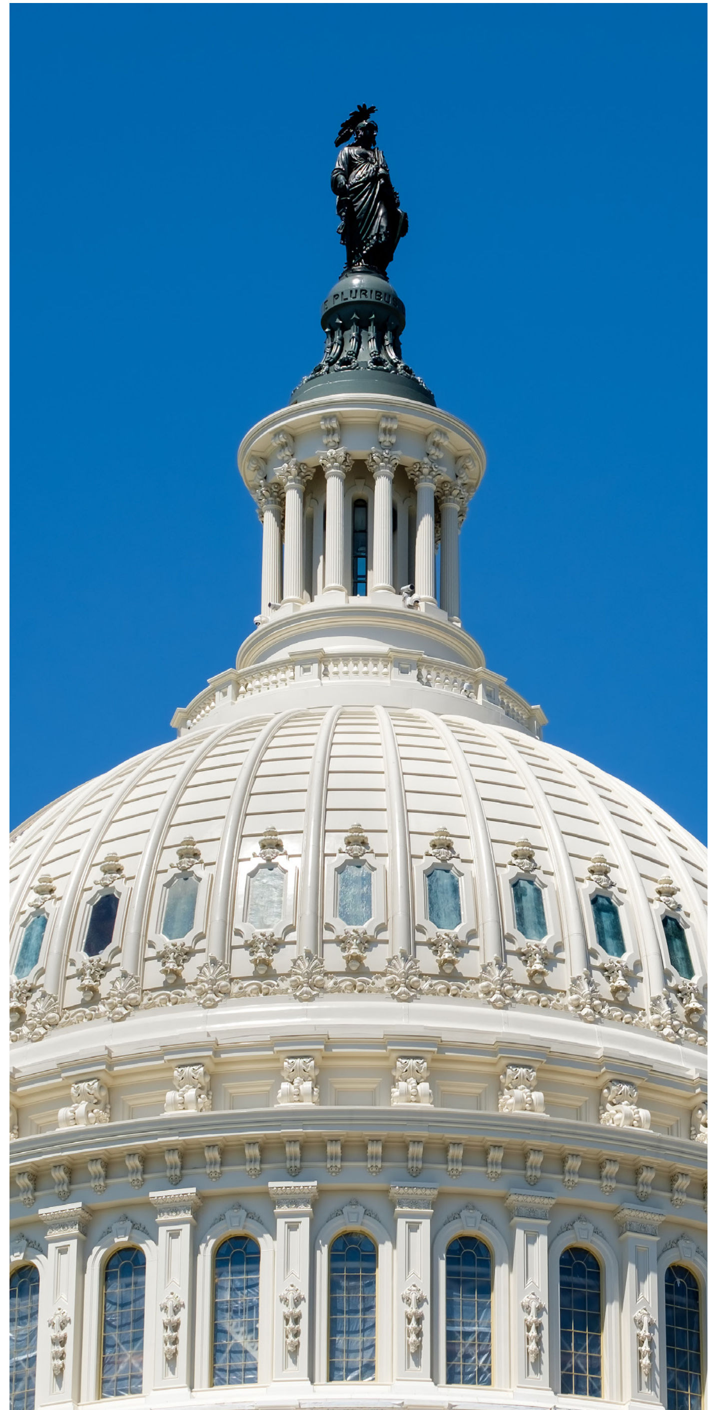
## Kwessell v. Yale University

Yale University sponsored a “Health Expectations Program,” under which employees were required to complete various medical screenings and potentially receive health coaching, depending on their screening results. These requirements implicated both the ADA and the GINA, as they were considered “medical examinations,” “disability-related inquiries” and “requests for genetic information.” Employees who decided not to participate in the program or did not complete all the required screenings or coaching sessions were charged a $25 per week fee.

In response, employees of Yale University, represented by the AARP, filed a class-action lawsuit against Yale University. The lawsuit claimed that Yale’s $25 per week fee violated the ADA’s and the GINA’s prohibition on requiring medical examinations or disability-related inquiries and disclosing genetic information because the $25 per week fee resulted in the program no longer being voluntary. In addition to the settlement terms discussed above, Yale has agreed to purge all employee data previously collected under the Health Expectations Program, except for the data about employees who agree to permit their data to be retained. Finally, the settlement would require the third party administrator of Yale’s Health Expectations Program to receive employee consent before sending any data to the third party who provides health coaching.



## Considerations for Employers

Employers who offer wellness programs that incentivize employees to submit to a medical examination or disability-related inquiry or provide genetic information should, regardless of the amount of the offered incentive closely examine these programs with their legal counsel as it is not clear to what extent, if any, these types of incentives are permitted under the ADA and the GINA. This is especially true for employers who offer larger incentives, as employees may argue that they cannot afford not to participate in the program, questioning the program’s voluntary nature.

## How Brown & Brown Can Help

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