



6570-01

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

[EEOC-2018-0004]

RIN 3046-AB01

Removal of Final ADA Wellness Rule Vacated by Court

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This final rule removes from the Code of Federal Regulations a section of the final rule published on May 17, 2016, entitled “Regulations Under the Americans With Disabilities Act.” This action responds to a decision of the U.S. District Court for the District of Columbia that vacated the incentive section of the ADA) rule effective January 1, 2019.

DATES: The action is effective on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, (202) 663-4665 (voice), christopher.kuczynski@eeoc.gov; or Joyce Walker-Jones, (202) 663-7031 (voice); joyce.walker-jones@eeoc.gov; or (202)663-7026 (TTY).

SUPPLEMENTARY INFORMATION: On May 17, 2016, the Equal Employment Opportunity Commission (EEOC) published a final rule entitled “Regulations Under the Americans With Disabilities Act” under the authority of Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101-12117. 81 *Federal Register* 31126. The rule “provide[d] guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that ask them to respond to disability-related inquiries and/or undergo medical examinations.”

On October 24, 2016, AARP filed a complaint in the U.S. District Court for the District of Columbia challenging the incentive section of the ADA rule. On August 22, 2017, the District Court concluded that the Commission did not provide sufficient reasoning to justify the incentive limit adopted in the ADA rule and remanded the rule to the EEOC for reconsideration without vacating it. Following a motion by AARP to alter or amend the court's summary judgment order, the court issued an order vacating the incentive section of the rule, 29 CFR 1630.14(d)(3), effective January 1, 2019. *AARP v. EEOC, D.D.C.*, No. 16-2113 (D.D.C. December 20, 2017). Consistent with that decision, this rule removes the incentive section of the ADA regulations at 29 CFR 1630.14(d)(3).

This rule is not subject to the requirement to provide public comment because it falls under the good cause exception at 5 U.S.C. 553(b)(B). The good cause exception is satisfied when notice and comment is "impracticable, unnecessary, or contrary to the public interest." *Id.* This rule is an administrative step that implements the court's order vacating the incentive section of the ADA rule. Additionally, because this rule implements a court order already in effect, the Commission has good cause to waive the 30-day effective date under 5 U.S.C. 553(d)(3).

List of Subjects in 29 CFR Part 1630

Administrative practice and procedure, Equal employment opportunity.

For the reasons set forth in the preamble, under the authority of 42 USC 12101-12117, the Commission amends chapter XIV of title 29 of the Code of Federal Regulations as follows:

**PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT
PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT**

1. The authority citation for part 1630 continues to read as follows:

Authority: 42 U.S.C. 12116 and 12205a of the Americans with Disabilities Act, as amended.

§ 1630.14 [Amended]

2. Amend § 1630.14 by removing and reserving paragraph (d)(3).

Dated: December 14, 2018

Victoria A. Lipnic

Acting Chair, U.S. Equal Employment Opportunity Commission