



U.S. Equal Employment Opportunity Commission

PRESS RELEASE
8-20-14

EEOC Lawsuit Challenges Orion Energy Wellness Program and Related Firing of Employee

Steep Penalties for Not Participating Said to Make Program Involuntary and Violate Disabilities Act

MILWAUKEE -- Manitowoc, Wis.-based Orion Energy Systems violated federal law by requiring an employee to submit to medical exams and inquiries that were not job-related and consistent with business necessity as part of a so-called "wellness program," which was not voluntary, and then by firing the employee when she objected to the program, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed today.

In a lawsuit filed in Green Bay, Wis., today, the federal agency contends that Orion instituted a wellness program that required medical examinations and made disability-related inquiries. When employee Wendy Schobert declined to participate in the program, Orion shifted responsibility for payment of the entire premium for her employee health benefits from Orion to Schobert. Shortly thereafter, Orion fired Schobert.

The EEOC maintains that Orion's wellness program violated the Americans with Disabilities Act (ADA) as it was applied to Schobert, and that Orion retaliated against Schobert because of her good-faith objections to the wellness program. The EEOC further asserts that Orion interfered with Schobert's exercise of her federally protected right to not be subjected to unlawful medical exams and disability-related inquiries.

The EEOC brought the suit under Title I of the ADA, which prohibits disability discrimination in employment, after first attempting to reach a pre-litigation settlement through its conciliation process. The case, (*EEOC v. Orion Energy Systems*, Civil Action 1:14-cv-01019) was filed in U.S. District Court for the Eastern District of Wisconsin, Green Bay Division, and is assigned to U.S. District Judge Chief Judge William C. Griesbach.

The EEOC filed another disability discrimination suit against Orion in May 2014 (*EEOC v. Orion Energy Systems*, Civil Action No. 14-cv- 00619). In that lawsuit, the EEOC contended that Orion fired Scott Conant after he experienced a disabling condition that substantially limited his ability to walk and required that he use a wheelchair. The EEOC said that Conant's termination followed his request for accommodations, such as an automatic door opener, to allow him to enter and exit the Orion workplace. Orion never installed a door opener while Conant worked there.

This most recent lawsuit is the EEOC's first to directly challenge a wellness program under the ADA. Earlier hearings by the EEOC on wellness programs revealed that a majority of employers now offer some sort of wellness program -- 94 percent of employers with over 200 workers, and 63 percent of smaller ones, according to Karen Pollitz of the Kaiser Family Foundation, which researches issues relating to health care.

"Employers certainly may have voluntary wellness programs -- there's no dispute about that -- and many see such programs as a positive development," said John Hendrickson, regional attorney for the EEOC Chicago district. "But they have to actually be voluntary. They can't compel participation by imposing enormous penalties such as shifting 100 percent of the premium cost for health benefits onto the back of the employee or by just firing the employee who chooses not to participate. Having to choose between responding to medical exams and inquiries -- which are not job-related -- in a wellness program, on the one hand, or being fired, on the other hand, is no choice at all."

The EEOC's Chicago District Office is responsible for processing discrimination charges, administrative enforcement, and the conduct of agency litigation in Illinois, Wisconsin, Minnesota, Iowa and North and South Dakota, with Area Offices in Milwaukee and Minneapolis.

The EEOC is responsible for enforcing federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at <http://www.eeoc.gov>.