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Judge won't block EEOC wellness program regulations

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(Reuters) - A lobbying group for older Americans has lost its bid to temporarily block Obama administration rules allowing employers to raise insurance premiums for workers who do not participate in employee wellness programs.

U.S. District Judge John Bates in Washington D.C. on Thursday denied AARP's motion for a preliminary injunction in its challenge to the Equal Employment Opportunity Commission's regulations, saying the group had not shown that its members faced any imminent harm when the rules take effect on January 1st.

AARP says in the lawsuit it filed on behalf of its members in October that the EEOC's rules violate federal law by forcing workers to choose between hefty financial penalties or revealing sensitive health information to employers.

Companies' wellness programs, which have become increasingly popular in recent years, can include incentives for workers to quit smoking, lose weight or undergo preventive health screenings, among other things. Workers who participate are usually asked by employers to divulge confidential medical information, which is typically illegal otherwise.

In moving for a temporary injunction, AARP claimed its members with employer-sponsored health insurance would suffer irreparable harm because they would be unable to afford premium increases permitted under the EEOC's rules.

But Bates said even if the higher premiums are found to be illegal, that harm is not irreparable because workers could be made whole through monetary damages.

"The court may not manufacture irreparable injury for the plaintiff based on speculation that ... one of AARP's members somewhere may be compelled to disclose protected information for the first time in 2017," Bates wrote.

AARP attorney Dara Smith in a statement called the ruling a "temporary setback" and said the group was confident it would triumph on the merits of its case.

EEOC spokeswoman Christine Nazer declined to comment, citing the ongoing litigation.

The EEOC rules, released in May, say employers can offer workers incentives worth up to 30 percent of the cost of their cheapest individual health insurance plans, or 60 percent for couples, to participate in wellness programs without violating federal anti-discrimination laws.

But in the lawsuit, AARP says those incentives are really penalties for workers who are leery of sharing their medical information and render the programs involuntary in violation of the Americans with Disabilities Act and the Genetic Information Nondisclosure Act, which prohibits employers from asking about workers' medical history.

The U.S. Chamber of Commerce in a November amicus brief backing the EEOC said workers who participate in wellness programs would not be at risk of discrimination by employers, because their medical information is protected by a host of laws including the ADA and the Health Insurance Portability and Accountability Act.

Bates on Thursday agreed, saying the EEOC rules require information obtained through wellness programs to be kept in separate medical files from other personnel records, and prohibit employers from selling, sharing or otherwise disclosing the information.

The EEOC issued the regulations after losing a high-profile 2013 case in which it said Honeywell International Inc violated the ADA by lowering premiums for workers who signed up for wellness programs. The agency also faced pressure from the business community to clarify its rules in light of the 2010 Affordable Care Act, which encourages the use of wellness programs.

The case is AARP v. EEOC, U.S. District Court for the District of Columbia, No. 16-cv-2113.

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For EEOC: Steven Myers

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