

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LISA KWESELL; CHRISTINE	:	
TURECEK; AND JASON SCHWARTZ,	:	CIVIL ACTION NO.:
individually and on behalf all others	:	3:19-cv-1098 (KAD)
similarly situated,	:	
	:	CLASS ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
YALE UNIVERSITY,	:	
	:	
Defendant.	:	March 2, 2020

PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56(a), and D. Conn. L. R. 7, Plaintiffs Lisa Kwesell, Christine Turecek, and Jason Schwartz, through undersigned counsel, move for partial summary judgment as to the following portions of the First Amended Complaint:

- (1) Count I in its entirety;
- (2) Count II except as to class allegations incorporated by reference;
- (3) Count III except as to Paragraphs 119-20 (unlawful disclosure of genetic information);
- (4) Count IV except as to class allegations incorporated by reference and Paragraphs 126-27 (unlawful disclosure of genetic information).

These portions of the First Amended Complaint allege that Defendant Yale University (“Yale”), through its Health Expectations Program (“HEP” or the “Program”) for Local 34 UNITE HERE and Local 35 UNITE HERE union members, violates the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§12112(d)(4), by requiring medical examinations and

ORAL ARGUMENT REQUESTED

making medical inquiries that are not job-related and not part of a “voluntary” employee health program, and the Genetic Information Nondiscrimination Act (“GINA”), 42 U.S.C. § 2000ff-(1)(b), by requesting genetic information without prior knowing, voluntary, written consent from employees. Plaintiffs ask the Court to hold that the HEP is not “voluntary” under these civil rights statutes because Yale fines employees \$25 per week for non-participation or noncompliance—a penalty that cannot be squared with the statutes’ plain language, which demands nothing less than complete freedom of choice, unaffected by financial consideration or coercion. Alternatively, even if the Court does not conclude that the HEP’s penalties render the program non-voluntary under both statutes, Plaintiffs ask the Court to hold that the HEP acquires genetic information in violation of GINA because even if employees opt-out of the Program and pay the fine, Yale acquires their genetic information through the transfer of their health insurance claims data from health insurers to Yale’s wellness vendor at Yale’s direction, without employees’ knowledge or consent.¹ In either case, partial summary judgment is warranted.

Respectfully Submitted,

/s/ Dara S. Smith

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¹ If the Court does not decide that summary judgment is appropriate on the issue of whether the program is “voluntary” but concludes that Plaintiffs have proved any of the sub-issues in these claims—*e.g.*, that the HEP includes medical inquiries and examinations under the ADA—Plaintiffs ask that the Court enter summary judgment on those issues.

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2020, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system and by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

By: /s/ Dara S. Smith
Dara S. Smith