

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

LOCAL RULE 56(a)(1) STATEMENT

Pursuant to Local Rule 56(a)(1), Plaintiffs Lisa Kwesell, Christine Turecek, and Jason Schwartz (collectively, “Plaintiffs”) submit the following statement of material facts to which there are no genuine issues to be tried:¹

1. Yale University (“Yale”) is Plaintiffs’ employer. Exhibit E at 4.
2. Plaintiffs are employees of Yale. Exhibit E at 4.
3. Lisa Kwesell is a member of UNITE HERE Local 34 (“Local 34”). Exhibit E at 3.
4. Christine Turecek is a member of UNITE HERE Local 35 (“Local 35”). Exhibit E at 3.
5. Jason Schwartz is a member of Local 35. Exhibit E at 4.
6. In or around January 2017, Yale entered into new collective bargaining agreements with Local 34 and Local 35. Exhibit B at ¶ 38.

¹ Referenced documents are attached to the Declaration of Elizabeth A. Aniskevich in Support of Plaintiffs’ Motion for Partial Summary Judgment.

7. The January 2017 CBAs for Local 34 and 35 contain the terms of the Health Expectations Program (“HEP”). Exhibit E at 4.
8. Plaintiffs and their covered spouses are subject to the HEP. Exhibit D at YU-00000108 (“Expectations apply to covered employees and covered spouses, not dependents.”).
9. Covered spouses are those who receive health insurance through Yale. Exhibit C at 44:3-17.
10. Employees represented by Local 34 and 35 who are not participating, or whose covered spouses are not participating, in the HEP are subject to a \$25 weekly opt-out fee. Exhibit E at 4; Exhibit D at YU-00000108.
11. Employees represented by Local 34 and 35 who are not compliant, or whose covered spouses are not compliant, with the HEP are subject to a \$25 weekly opt-out fee. Exhibit F at 1 (“If an action is not completed by the assigned due date, you will become ‘non-compliant’ and an Opt-Out Penalty will be applied a month after the assigned due date for a minimum of three consecutive months.”); Exhibit D at YU-00000108.
12. Yale’s payroll system deducts the \$25 weekly penalty for those who are not participating in the HEP or who are not compliant with the HEP. Exhibit F at 2 (“The opt-out fee will be payroll deducted on a weekly basis.”)
13. If participants do not complete all of the HEP’s applicable “health actions” in the timeframe specified by the Program, they are deemed not in compliance. Exhibit C at 60:15-21 (“Q: So if you are out of compliance with the program you pay an opt out fee. Is that correct? A: If you are past due with a health action, then you – there is a timeline. So if you get to an absolute due date and you are not current with [a] health action, then an opt-out would start the second month of the next quarter.”)

14. The HEP's health actions include:

- a. completing a cholesterol screening within the past five years for individuals over the age of 40;
- b. completing a diabetes screening within the past 5 years for individuals over the age of 40;
- c. completing a breast cancer screening within the last two years for individuals over the age of 50;
- d. completing a cervical cancer screening within the past three years if between ages 21-29; within the past three years if between the ages 30-64 if the individual does not have documented HPV negative status; and within the past five years if the individual has documented HPV negative status; and
- e. completing a colorectal screening within the past 10 years if over the age of 50 or within the last one year if using the FIT/FOBT testing.

Exhibit D at YU-00000109; Exhibit B at ¶ 41 (confirming accuracy of chart summarizing health actions)

15. TrestleTree is a vendor that administers a portion of the HEP on Yale's behalf. Exhibit C at 16:21-17:5.

16. HealthMine is a vendor that administers a portion of the HEP on Yale's behalf. Exhibit C 16:2-20.

17. Insurance claims-data and claim-equivalent data is transferred on a regular basis from union employees' insurers to HealthMine. Exhibit C at 35:6-37:3; 39:23-40:25 (explaining the insurance claims and claims-equivalent transfer process).

18. The insurance claims and claims-equivalent data reflects individuals' medical information, such as procedure codes and pharmacy claims, including current prescriptions and the quantity and the strength of the medication. Exhibit C at 37:7-39:4 (explaining what is included in insurance claims data and claims equivalent data).

19. The transfer of insurance claims data and claims-equivalent data is not disclosed to union members, their consent is not required, and the transfer occurs even if the individual opts-out of the Program. Exhibit C at 43:18-44:2 (Q: “Is it disclosed to participants in the HEP that their insurance claims data is transferred from their insurer to HealthMine as part of the administration of the HEP? A: I am not familiar with an actual disclosure. . . . So I am not aware of it being disclosed, no.”); *id.* at 43:15-17 (Q: “If you affirmatively opt out, would your claims information still be transferred?” A: “Yes, it would, as allowed under HIPAA.”); *id.* at 41:8-9 (“So opting out of the HEP program would not change the transfer of files.”).
20. HealthMine reviews the claims data and claims equivalent data to identify whether an individual is in compliance with the Program and to identify individuals for health coaching. Exhibit C at 71:15-72:9; *id.* at 37:8-38:2 (noting that HealthMine reviews claims and claims-equivalent data to “identify the challenges of high risk patients, those that are dealing with multiple chronic conditions or acute conditions that would put them into a higher risk.”).
21. Health coaching is required for certain participants in the HEP. Exhibit C at 73:9-24; Exhibit D at YU-00000108.
22. If HealthMine identifies an individual for health coaching, it notifies TrestleTree and provides TrestleTree with information concerning the “condition [the individual] is dealing with.” Exhibit C at 47:20-49:10.
23. TrestleTree contacts individuals identified for health coaching. Exhibit C at 72:11-15.
24. Individuals are referred to health coaching if they have (1) a diagnosis of diabetes, heart disease, hyperlipidemia, COPD, heart failure, or hypertension and (2) certain risk

variables including gaps in care, multiple chronic conditions, lack of evidenced-based screenings, lab values out of range or other evidence of chronic conditions deemed “poorly controlled.” Exhibit D at YU-00000108.

25. Those identified for health coaching must complete three hours of coaching to avoid the \$25 weekly penalty. Exhibit C at 73:9-24.
26. Participants in the HEP can complete additional health coaching on a “voluntary basis” once they have satisfied the three hour requirement. Exhibit C at 73:9-24.
27. During health coaching, individuals must engage in “guided conversations” led by the health coaches that are designed to elicit information about the participant’s “basic sort of health problems and challenges.” Exhibit C at 75:12-16.
28. Health coaches “have specific information that they are looking for [when speaking with individuals] that would be similar to a health assessment.” Exhibit C at 75:18-20.
29. Health coaches discuss prescription use and pharmacy compliance with participants. Exhibit C at 76:5-14.
30. While TrestleTree employs the health coaches, Yale is involved in the hiring of health coaches and can “veto” any proposed health coach. Exhibit C at 69:6-21.
31. If an individual is granted an exception from any requirement of the HEP, the alternative is health coaching. Exhibit C at 67:20-23.
32. Yale’s website, Your.Yale.edu, explains: “The HEP Program is *voluntary* for [Yale Police Benevolent Association] staff and their covered spouses – no opt out fees will apply for non-participation or non-compliance.” Exhibit J (emphasis added).

33. Yale's website, Your.Yale.edu explains: "[Yale Police Benevolent Association] members and their spouses may participate in the HEP program screening requirements and coaching on a *voluntary* basis." Exhibit J (emphasis added).
34. Yale's Health Benefits brochure describes programs required to comply with the HEP, as well as additional voluntary programs. Exhibit D at YU-00000108.

Respectfully Submitted,

/s/ Dara S. Smith

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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 filing. Notice of this filing will be sent by e-mail 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.

/s/ Dara S. Smith
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