

# FYI<sup>®</sup> Alert

## For Your Information<sup>®</sup>

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## EEOC Says Proposed Wellness Program Regulations Imminent

On March 20th, the EEOC announced that it sent a notice of proposed rulemaking on wellness programs for clearance. The proposed regulations, which were approved by a bipartisan vote of EEOC commissioners, will address the interaction between the ADA and financial incentives offered under group health plan wellness programs. The announcement comes at a time when wellness programs are receiving attention on Capitol Hill. Employers with wellness programs offered through their group health plans have been living in limbo, uncertain of the EEOC's position on the legality of some program incentives. Proposed regulations and, we hope, clarity should be forthcoming.

### Background

Title I of the Americans with Disabilities Act (ADA), which is enforced by the Equal Employment Opportunity Commission (EEOC), prohibits employment discrimination on the basis of disability. Among other things, the ADA restricts when an employer may make disability-related inquiries or require medical examinations unless they are job-related and consistent with business necessity. However, the ADA makes an exception for certain wellness programs. An employer may make disability-related inquiries (e.g., health risk assessments) or conduct medical examinations (e.g., biometric screenings) that are part of a voluntary wellness program (provided medical records are kept confidential and separate from personnel records).

In recent months, the EEOC's regional attorney in the Chicago District Office filed three law suits, alleging that penalties imposed on employees who declined to participate in their employers' wellness programs violated the ADA. (See our [October 30, 2014](#) and [November 4, 2014](#), *FYI Alert* publications.)

In January 2015, the Senate Committee on Health Education Labor & Pensions (HELP) held a hearing focused on employer-sponsored wellness programs. Venting frustrations with litigation and the lack of guidance, some senators suggested that Congress might act in the absence of the EEOC. (See our [January 30, 2015](#) *Legislate*.)



On Tuesday, the House Education and Workforce Committee will hold a hearing on a bill that would affect EEOC enforcement activity on employer-sponsored wellness programs — H.R. 1189, the Preserving Employee Wellness Programs Act.

## EEOC Press Release

While consistently listed on the EEOC's regulatory agenda, up to this point, the agency has failed to issue decisive guidance on wellness programs. Apparently that has changed with the EEOC [press release](#) announcing that it has sent a notice of proposed rulemaking on wellness programs to the White House Office of Management and Budget (OMB) for clearance. The proposed rules would amend the regulations implementing the equal employment provisions of the ADA to address the interplay of the ADA and the ACA. OMB generally has up to 90 days to review the proposed regulations before they are published to the public. Once approved by OMB, the proposed regulations will be published in the Federal Register for a 60-day public notice and comment period.

### Buck Consultants to testify at House hearing on wellness

Buck Consultants at Xerox's Tami Simon, Managing Director of the Knowledge Resource Center and the Career Practice, will testify at this House hearing on behalf of the American Benefits Council. (See our [March 20, 2015 \*Legislate\*](#) for more information.)

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