



SETTING THE RECORD STRAIGHT: Q&A ON VOLUNTARY EMPLOYEE WELLNESS PROGRAMS

Voluntary employee wellness plans have long helped lower health care costs for working families and promote the health and wellbeing of employees. Rep. Virginia Foxx (R-NC), chairwoman of the House Committee on Education and the Workforce, introduced the [Preserving Employee Wellness Programs Act](#) (H.R. 1313) to provide regulatory clarity so employers can have the certainty they need to continue offering their workers the option of participating in employee wellness programs. Unfortunately, critics of the bill are spreading false information to deny workers that option. Below are some basic facts to help set the record straight.

What does the *Preserving Employee Wellness Programs Act* do?

This legislation would protect the ability of workers and their families to continue to voluntarily participate in employee wellness programs. Millions of Americans are already enrolled in these programs, which have been in place for years as a means to promote a healthy workforce and help families control their health care costs. A bipartisan provision in the *Affordable Care Act* (ACA) encouraged greater use of voluntary employee wellness programs by expanding permissible rewards for participating workers. The bill would reaffirm wellness program policies under the ACA, giving employers more clarity and certainty on the rules governing these programs.

Why is regulatory clarity needed?

Regulatory clarity is needed due to a number of enforcement actions and regulatory steps taken by the Equal Employment Opportunity Commission (EEOC) in recent years. The EEOC's actions contradict the ACA and the rules promulgated by the Obama administration implementing the ACA. As a result, employers and employees who want to participate in these programs are caught in a regulatory Catch-22: Either follow the ACA guidelines and be in violation of the EEOC rules, or vice versa. By reaffirming the policies outlined in the ACA, H.R. 1313 will provide private-sector employers the legal certainty they need to continue offering these voluntary programs.

Does H.R. 1313 allow employers to force their employees to submit to genetic testing?

No. Wellness programs have always been completely voluntary. They were voluntary under the Democrat-passed ACA, as well as under regulations issued by the Obama administration. They remain voluntary under H.R. 1313, offering employees a way to control their health care costs. These programs have been in place for years and typically involve health-risk assessments to help improve the health and well-being of those who choose to participate. As [Snopes](#) has reported: "HR 1313 does not allow employers to force all their workers to submit to genetic testing."

Does the *Genetic Information Nondiscrimination Act of 2008 (GINA)* allow employers to acquire genetic information as part of an employee wellness program?

Yes. While the *Genetic Information Nondiscrimination Act of 2008* provides strong safeguards protecting an employee's genetic information, the law has always provided a clear exception for voluntary participation in employee wellness programs. The law clearly [states](#): "It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee except — where ... health or genetic services are offered by the employer, including such services offered as part of a wellness program ..."

Under H.R. 1313, can employers discriminate based on genetic information acquired through a wellness program?

No. Discrimination based on genetic information is illegal under existing federal law and would remain illegal under H.R. 1313. Under the bill, employers would still be required to follow anti-discrimination policies in the *Genetic Information Nondiscrimination Act of 2008* that state: "It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee; or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee."

Again, these strong protections will still be enforced under H.R. 1313.

Why do employee wellness programs even involve "genetic information" in the first place?

Private-sector employee wellness programs are designed to improve the health and well-being of workers, which is why workers voluntarily provide health-related information when they choose to participate. For example, many programs include health-risk assessments. Disease management programs, which are among the most successful wellness programs, often include diagnostic testing and screening for conditions or diseases. An employee at risk for a certain disease may choose to enroll in one of these programs to help maintain a healthy lifestyle, and the program may involve a blood test and questions about their family medical history. These types of tests and assessments — which only occur after an individual has voluntarily decided to participate in the program — help ensure the program effectively improves the health of those workers who choose to participate.

Will employees who voluntarily provide genetic information receive privacy protections?

Yes. Section 206 of the *Genetic Information Nondiscrimination Act of 2008* includes strong confidentiality protections that govern an individual's genetic information, such as the legal

requirement to treat the information as “a confidential medical record.” These protections would still apply under H.R. 1313. Furthermore, the *Health Insurance Portability and Accountability Act* (HIPAA) has long governed the privacy of individuals enrolled in group health plans, and this would continue to be the case under H.R. 1313. Recognizing this is very personal, sensitive information, the bill protects the right of workers to voluntarily choose whether to participate in these programs.

Does H.R. 1313 penalize or increase premiums for employees who choose not to participate in a wellness program?

No. In programs that offer incentives, those who choose to enroll can receive a reduction in their health insurance premiums. Those who decline to participate are not forced to pay any additional health care costs, nor will they experience any increase in their health insurance premiums. In no way are those who decide not to participate in a wellness program worse off. This has always been the case under employee wellness programs — including those promoted by President Obama’s signature health care law — and the same is true under H.R. 1313.

Does H.R. 1313 allow employers to charge smokers more for health insurance than non-smokers?

No. As is already the case under current law, employees have a choice on whether or not to enroll in a smoking cessation program that provides a reduction in their health insurance premiums. If they choose not to enroll, they are not paying any more for health care premiums than non-smokers who choose not to enroll.