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Congressional Leaders Introduce Legislation to Clarify Employers' Right to Use Incentives as Part of Wellness Programs

We issued an E-Alert last November regarding the EEOC's opposition to employers' efforts to rein in health care costs through the use of voluntary wellness programs. The Affordable Care Act ("ACA") authorizes an employer's use of wellness programs and further permits an employer to offer employees financial incentives to participate voluntarily in the programs. In direct conflict with the Affordable Care Act, the EEOC has initiated lawsuits against several employers claiming that while the incentives tied to wellness programs may comply with the ACA, they do not comply with the Americans With Disabilities Act and Genetic Information Nondiscrimination Act. The EEOC contends that the incentives are so large as to render an employee's participation in the program involuntary.

As the lawsuits wind their way through the courts, a number of Senate and House leaders have introduced legislation to provide more certainty to employers regarding their right to provide incentives to employees to participate in wellness programs. Also, the legislation is also aimed toward ending the EEOC's attack on the use of incentives in compliance with the ACA. We have included below the Press Release that the House of Representatives' Committee on Education & The Workforce issued on March 3, 2015, regarding this legislative initiative. If you have any questions regarding your wellness program, please contact Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com).

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Senate, House Leaders Introduce Bill to Provide Certainty to Employers Offering Innovative Employee Wellness Programs

Legislation will eliminate confusion caused by EEOC for employers who provide financial rewards

to employees for healthy lifestyle choices

WASHINGTON, D.C. | March 3, 2015 - Reps. John Kline (R-MN), Tim Walberg (R-MI), and Phil Roe (R-TN), and U.S. Sens. Lamar Alexander (R-TN), Mike Enzi (R-WY), Johnny Isakson (R-GA), Tim Scott (R-SC), Orrin Hatch (R-UT), Pat Roberts (R-KS), yesterday introduced legislation to provide legal certainty—and eliminate confusion caused by the Equal Employment Opportunity Commission (EEOC)—for employers offering employee wellness programs that lower health insurance premiums to reward healthy lifestyle choices.

“Employee wellness programs not only help control the cost of health insurance,” said Kline, chairman of the House Education and the Workforce Committee, “but they also promote healthy lifestyles. Remarkably, executive overreach by the EEOC is actually punishing employers for offering wellness plans. Congress must take action to rein in this agency and provide the certainty necessary for more Americans to enjoy the benefits of these innovative health programs.”

“More and more, employers are using outcomes-based programs to make health insurance less expensive for their employees,” said Alexander, chairman of the Senate Health, Education, Labor, and Pensions Committee. “Nearly half of all large employers say they plan to adopt these innovative plans by 2017, making it even more important to eliminate confusion caused by the EEOC and restore certainty for employers who want to reward their employees for leading a healthy lifestyle.”

“This is yet another example of the EEOC being out of step with employers and employees,” said Walberg, chairman of the House Subcommittee on Workforce Protections. “Innovative approaches that empower employees to take more control of their personal health care decisions should be encouraged, not stymied by greater government overreach.”

“With so many employers taking advantage of the benefits that come with offering workplace wellness programs, it is important that Congress acts to clear any legal uncertainty or confusion,” said Enzi, chairman on the Senate Subcommittee on Primary Health and Retirement Security. “By reaffirming existing law, Congress is ensuring that employees can continue to benefit financially when they choose to make healthy lifestyle choices.”

“This legislation ensures what Congress has already decided – private companies are free to promote health and wellness among their employees through voluntary incentives like premium discounts, rather than heavy-handed federal mandates and taxes. I am proud to be an original co-sponsor of the Preserving Employee Wellness Program Act, and applaud employers that put in place such programs to lower health care costs for employees while also creating a healthy workforce,” said Isakson, chairman of the Senate Subcommittee on Employment and Workplace Safety.

“Our health care system needs common sense solutions driven by positive outcomes, not more uncertainty caused by the federal government,” said Scott. “Employee wellness plans have been proven to help control health insurance costs, and as more and more employers utilize them it is essential that the EEOC simply clarify its rules instead of pursuing litigation against employers because it has refused to issue guidance. I am excited to join my colleagues to introduce this important legislation that helps promote healthy lifestyles and cuts through some of the bureaucratic maze that Washington specializes in creating.”

“With this bill, Congress’s bipartisan commitment to employee wellness programs should put a stop to EEOC’s overreach in seeking a court order to halt a company’s healthcare premium discount program,” said Hatch. “At a time when Obamacare is creating uncertainty for employers and employees, this act will provide legal certainty to employers offering workplace wellness programs.”

“Once again during the Obama administration, Congress must clarify the intent of a bipartisan provision,” Roberts said. “In this case, I am happy to co-sponsor legislation that would reaffirm our commitment to business and health in regards to wellness programs. Financial incentives get results. Employers should be able to offer programs that encourage employees to make healthy lifestyle choices.”

A bipartisan provision in the Patient Protection and Affordable Care Act allowed employers to discount health insurance premiums by up to 30 percent—or 50 percent if approved by the Departments of Treasury, Labor, and Health and Human Services—for healthy lifestyle choices like quitting smoking or maintaining a healthy cholesterol level. A recent survey showed that 48 percent of all employers plan to add one of these programs by 2017. However, recent litigation pursued by the EEOC, citing the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, has threatened the certainty of law for employers who offer these programs.

The Preserving Employee Wellness Programs Act, introduced yesterday by Alexander and Kline, will reaffirm existing law, which allows for employee wellness programs tied to a financial reward. The legislation clarifies that an employee’s spouse may participate in the program as well. It also provides employees up to 180 days to request and complete an alternative wellness program if it is medically inadvisable or unreasonably difficult for an employee to participate in the original employee wellness program. Finally, the legislation does not limit the EEOC’s authority to investigate and litigate complaints of employment discrimination.