

July 16, 2018

The Honorable Steve Daines
United States Senate
Washington, DC 20510

Dear Senator Daines:

On behalf of employers across the country who incentivize health and wellness in their workplace, we are writing today to urge a vote on the Administration's EEOC Commissioner nominees. Employers offering wellness programs with their health plans have serious concerns about the fate of workplace wellness programs due to the lack of guidance from the Equal Employment Opportunity Commission (EEOC).

For years, the decision about whether or not to offer employees access to optional wellness plans has been one of the rare areas of consensus for executives looking to increase value in their healthcare offerings and improve health outcomes through engagement. Employees get real rewards to make healthy lifestyle changes through incentives to screen for diseases, start exercising and eat healthier. Employers see benefits such as reduced workplace absenteeism, lower employee stress levels and in some cases, lower healthcare costs.

In fact, wellness plans are such a well-regarded health care "win-win" solution that expanding their use was one of the few areas of bipartisan agreement in the Affordable Care Act (ACA). Congress included a key provision in the ACA specifying employers could offer employees incentives to participate in wellness programs. This provision was an overdue endorsement of value for appropriately-designed wellness plans that fueled a significant increase in adoption across businesses of all sizes and categories. More than 85 percent of employers now offer some sort of wellness bonus to employees who take steps to live a healthier and more active lifestyle.

Consider the case of corporate-sponsored biometric screenings. These clinical assessments are helping Americans nationwide learn of previously undetected diabetes, metabolic syndrome and cardiovascular risk. There is a clear correlation between incentives and the level of engagement, particularly by those who are the least aware of their health risks.

The EEOC issued guidance on incentives back in May of 2016, but a federal court tossed out a key portion of those rules (*AARP v. EEOC*), stating that they would no longer be effective starting **January 1, 2019**. Plan administrators tasked with writing the guidelines for wellness programs going forward are rightfully frustrated with all the uncertainty around providing employees meaningful wellness incentives.

The federal court granted the EEOC until January 1, 2019, an opportunity to clarify the level of a financial reward an employer can offer an employee to participate in a wellness program. Yet, it is unlikely such clarification will be issued before January 1, 2019 without confirmation of the pending nominees.

Without clear guidance from the EEOC, we fear a Wild West of litigation could re-emerge as did it prior to the EEOC guidelines (e.g. *EEOC v. Honeywell*, *EEOC v. Orion Energy Systems*, *EEOC v. Flambeau Inc.*, *Seff v. Broward County, Florida*...) jeopardizing programs that are improving the health of America's workforce. For the future security of America's workplace wellness programs, we urge a vote on the Administration's EEOC Commissioner nominees.

We thank you for your consideration.

Sincerely,

Self-Insurance Institute of America, Inc.
Population Health Alliance
Healthcare Leadership Council
HealthFitness
Wellness Corporate Solutions
Bravo Wellness
Viverae