

January 4, 2010

Stephen Llewellyn
Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
131 M Street, NE., Suite 6NE03F
Washington, DC 20507

Dear Mr. Llewellyn:

We are writing to you in anticipation of the publication this month of a regulation under Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). Based on information letters released by the Equal Employment Opportunity Commission (“EEOC”) over the last several months, we are quite concerned that the definition of a “voluntary” wellness program that will be contained in the regulation will severely impair the effectiveness of these programs in the workplace.

Unclear Standard: Under the Americans with Disabilities Act (“ADA”), after employment begins, an employer may make disability related inquiries only if they are job related and consistent with business necessity or part of a “voluntary” wellness program.

The EEOC issued an opinion letter on what constitutes “voluntary” under the ADA in January of this year. According to that guidance, if a wellness program complied with the Health Insurance Portability and Accountability Act (“HIPAA”) standards for a voluntary wellness program (specifically the requirement that incentives not exceed 20% of the total annual cost of coverage), the program would be considered “voluntary” for purposes of the ADA.

In March of this year, the EEOC withdrew that portion of the guidance. Therefore, under the ADA it is currently unclear whether any incentive offered by an employer would render a program “involuntary,” even one that complies with HIPAA.

Our wellness programs: We have been committed to the use and expansion of wellness, prevention, and disease management programs for a number of years. These programs address potential health problems of our employees, often before they develop into more costly and deadly chronic disease. These efforts to encourage and guide healthy behavior, which have become increasingly popular within our workforce, have helped to control our healthcare costs while improving quality of life for our employees.

Impact of the unclear standard: Most employees need to be encouraged to complete a long, detailed HRA and to start to participate in a program of healthy living; financial incentives provide a key motivational trigger. Eliminating our ability to provide a financial incentive to individuals who complete an HRA or participate in a wellness program would effectively end these programs and the positive results they have produced for our workforce.

In conclusion: Wellness, prevention, and disease management programs are one of the few avenues available to us to help control our soaring healthcare costs. Moreover, these are programs that generally are met with enthusiasm by our employees, who are often relieved to be encouraged to lead a healthier lifestyle. Making our tasks in this regard more difficult, by preventing the use of financial incentives, is

an incomprehensible action in view of the dire necessity of holding down medical costs and encouraging individuals to assume more active control of their health.

We appreciate this opportunity to provide comments and would be happy to further discuss our concerns with you.

Sincerely,

Donna Garrison, CCP
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