

House Committee Passes H.R. 1313 Allowing Employers to Collect Genetic Information under Workplace Wellness Programs

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On March 8, 2017, the House Committee on Education and the Workforce approved a bill, [H.R. 1313 – Preserving Employee Wellness Programs Act](#), which would allow employers to require employees to undergo genetic testing and share such information under a workplace wellness program. The Committee favored the bill claiming it would allow employers to offer employee wellness plans, help them promote a healthy workforce and would lower health care costs. However, employees who refuse to test could be subject to higher insurance premiums. The committees on Energy and Commerce, and Ways and Means are considering the bill, and it is expected to be included in the larger healthcare replacement of the Affordable Care Act (“ACA”).

If H.R. 1313 passes into law, employers will still need to meet the requirements of workplace wellness programs and state laws regarding storage of sensitive personal information. When collecting genetic information employers should also consider their legal obligations to safeguard such data and, in the event of a breach, provide breach notifications to the affected individuals.

Currently, employers are prohibited and restricted from asking to collect genetic information from employees under the Genetic Information Nondiscrimination Act (“GINA”), the Americans with Disabilities Act (“ADA”) and other state laws. The bill specifically states that GINA and other protections will not apply to genetic testing conducted under a workplace wellness program or a program relating to health promotion or disease prevention.

Under GINA, group health plans (such as employer health plans) are not allowed to request or require genetic testing. Wellness plans are only allowed to disclose employee genetic information to employers in aggregate form so that an individual’s identity remains anonymous. However, employers are allowed to offer genetic testing to employees and receive the test results from employees on a voluntary basis.

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