

EEOC Draws Bipartisan Fire from Senate Committee

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As we have previously reported, the Equal Employment Opportunity Commission (EEOC) has taken an adversarial stance towards employers that impose negative consequences on employees who do not take advantage of wellness program initiatives. While the Affordable Care Act specifically authorized employers to utilize and implement wellness program initiatives in order to encourage healthy lifestyle choices by its employees, the EEOC has reacted by suing employers contending that such initiatives violate the ADA prohibitions on medical inquiries or discrimination against individuals because of their disabilities.

At a recent Senate Health, Education, Labor and Pensions committee hearing, both Republican and Democratic Senators were critical of the EEOC's decision to sue employers for their wellness program initiatives. The Republican Chairman of the committee, Lamar Alexander, specifically chastised the EEOC for its litigation efforts. Chairman Alexander noted that "innovation and healthy choices should be applauded, not punished." Similarly, Democratic Senator Barbara Mikulski specifically prodded the EEOC to develop formal regulations pertaining to wellness programs in order to avoid employers adopting a "minimalist" approach to such initiatives.

While the rate of health insurance increase has slowed of recent, the annual increases are still a significant expense to both employers and employees. Whether the EEOC will take a more collaborative approach in permitting greater flexibility for employers to implement more aggressive wellness programs in order to incentivize greater participation in such programs remains to be seen. It also remains to be seen whether any proposed regulations adopted by the EEOC pursuant to both the ADA and the Genetic Information Non-Discrimination Act will be harmonious with or hostile to the Affordable Care Act authorization for wellness programs.