



# HR 1313 and the Future of Employee Wellness Programs

Insights

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On March 8, the House's Education and Workforce Committee passed a bill, [HR 1313](#) – Preserving Employee Wellness Programs Act. The bill, which was introduced by U.S. Rep. Virginia Foxx in order to “reaffirm existing law to allow employee wellness programs to be tied to responsible financial incentives,” follows a [May 2016 ruling](#) by the EEOC that allows for premiums to be cut by up to 30% for individuals and 60% for couples enrolled in wellness programs. HR 1313 states that employers may provide additional insurance premium discounts to employees participating in voluntary wellness programs. Wellness programs include things such as health risk assessments, health screenings, flu shots, health fairs and workshops, exercise groups, fitness classes, smoking cessation classes, and/or participation incentives. Wellness programs are generally intended to incentivize healthier lifestyles among employees, and have been tied lower health costs. Wellness plans are regulated at both the federal and state level, however, as they also frequently involve gathering sensitive medical (including genetic) information.

Currently, employers are restricted from asking to collect genetic information from employees under the Genetic Information Nondiscrimination Act (GINA), the ADA, and related state laws. Under GINA, group (employer) health plans are not allowed to request or require genetic testing and genetic information may only be disclosed in aggregate form so that a participant's identity remains anonymous. Employers may collect genetic or other health related information from employees on a voluntary basis however. (See also [use of wearables in wellness plans](#)).

If passed, HR 1313 would represent a departure from current law, in that employers would be allowed to collect information about a “manifested disease or disorder of a family member.” The bill also specifically allows testing and collection of genetic information “notwithstanding any other provision of law.” Critics of HR 1313 have focused on this section of the bill, arguing that it effectively penalizes employees who refuse to share their genetic information, opening the door to potential “genetic discrimination.”

Should HR1313 pass into law, it is likely that employers will still need to comply with federal and state laws regarding the storage of personal/medical information. If employers choose to require collection of genetic information as part of participation in voluntary wellness plans, it will be critical that such information is stored securely and employers must be prepared to provide notice to employees in the event of a data breach.

The bill will next be considered by the committees on Energy and Commerce, and Ways and Means and is expected to be included as part of any proposed replacement of the Affordable Care Act (“ACA”). If HR 1313 passes into law, employers can expect to face challenges under GINA and the ADA and should seek legal advice on how best to implement a wellness program that includes the collection of genetic or other health related information.

### ***Related People***



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