



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

June 11, 2020

Janet Dhillon, Chair
Victoria A. Lipnic, Commissioner
Charlotte A. Burrows, Commissioner
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

RE: Today's Public Meeting on ADA Wellness Program Rules

Dear Chair Dhillon and Commissioners Lipnic and Burrows:

We write as co-chairs of the Consortium for Citizens with Disabilities (CCD) Rights Task Force to express our grave concern about the Commission's renewed effort to change its regulations implementing the Americans with Disabilities Act's (ADA's) application to workplace wellness programs, presumably to again permit financial penalties on workers who choose to keep their health information private. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

Congress included in the ADA a detailed scheme to limit employer inquiries seeking medical information from employees and applicants. These limits are a core protection of the ADA. Congress prohibited medical inquiries and medical exams of employees that are not job-related and consistent with business necessity in order to prevent discrimination. See S. Rep. 101-116, at 39-40 (1989) ("As was abundantly clear before the Committee, being identified as disabled often carries both blatant and subtle stigma. An employer's legitimate needs will be met by allowing the medical inquiries and examinations which are job-related."). As the EEOC noted in its guidance concerning disability-related inquiries of employees:

Historically, many employers asked applicants and employees to provide information concerning their physical and/or mental condition. This information often was used to exclude and otherwise discriminate against individuals with disabilities -- particularly nonvisible disabilities, such as diabetes, epilepsy, heart disease, cancer, and mental illness -- despite their ability to perform the job. The ADA's provisions concerning disability-related inquiries and medical examinations reflect Congress's intent to protect

the rights of applicants and employees to be assessed on merit alone, while protecting the rights of employers to ensure that individuals in the workplace can efficiently perform the essential functions of their jobs.¹

While there is a narrow exception for *voluntary* questions as part of employee health programs, as you know, the Commission's prior attempt to permit "voluntary" wellness program medical inquiries with large financial penalties for employees who chose not to respond was invalidated by a federal court.

We urge you not to adopt a new rule again permitting large financial penalties for employees who choose to keep their health information private. The employment rate for people with disabilities has remained far below the rate for any other group tracked by the Bureau of Labor Statistics. It is less than half of the employment rate for people without disabilities. Particularly during a pandemic that has dramatically and disproportionately affected people with disabilities, it is an ill-advised move to weaken employment protections for people with disabilities.

Moreover, while a majority of workplace wellness programs ask employees to disclose extensive personal health information and these programs have dramatically increased their use of financial inducements to encourage employees to disclose this information, "numerous studies find limited evidence of their effectiveness in promoting health or preventing disease."² Most recently, a large randomized controlled trial conducted by the National Bureau of Economic Research of employees at the University of Illinois found that "a comprehensive workplace wellness program had no significant effects on measured physical health outcomes, rates of medical diagnoses, or the use of health care services after 24 months."³ The authors concluded that "we add to a growing body of evidence from RCTs that workplace wellness programs are unlikely to significantly improve employee health or reduce medical use in the short term."⁴

Permitting large financial penalties on workers for exercising their right to keep non-job related health information private is not only inconsistent with the ADA; it is also bad policy, and we urge you not to do it.

¹ *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* (July 27, 2000), General Principles, <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.

² Karen Pollitz and Matthew Rae, *Kaiser Family Foundation, Trends in Workplace Wellness Programs and Evolving Federal Standards* (June 9, 2020), <https://www.kff.org/private-insurance/issue-brief/trends-in-workplace-wellness-programs-and-evolving-federal-standards/>.

³ Julian Reif et al., *Effects of a Workplace Wellness Program on Employee Health, Health Beliefs, and Medical Use A Randomized Clinical Trial*, *JAMA Internal Medicine* (May 26, 2020).

⁴ *Id.*

Sincerely,



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