The Preserving Employee Wellness Programs Act (H.R. 1313)

Rep. Virginia Foxx (R-NC), chairwoman of the Education and the Workforce Committee introduced the Preserving Employee Wellness Programs Act (H.R. 1313). H.R. 1313 allows critical anti-discrimination laws such as the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) to be circumvented in employer-provided wellness programs. Specifically, the Preserving Employee Wellness Programs Act would:

- Shift costs to workers
  - While wellness programs can provide a tool to create a healthier work environment, their effectiveness is questionable. The use of massive rewards to incentivize participation must be weighed against program efficacy and the impact that financial penalties can have on health care affordability.
  - If a worker is not comfortable disclosing health status information – because he or she is in fact unhealthy or perhaps struggling with mental illness – employers would be allowed to increase his or her premium, making health care less affordable.
  - If the end goal of wellness programs is to promote health and well-being, we must ensure that all workers – including those who do not want to disclose sensitive and private health information – can access them.

- Weaken key anti-discrimination and privacy protections
  - H.R. 1313 undermines protections enshrined in the ADA and GINA, both of which contain general prohibitions against the non-voluntary collection of certain medical information from employees without justification.
  - H.R. 1313 would allow employers to penalize workers for not providing sensitive medical and genetic information and leave workers vulnerable to workplace discrimination.
  - H.R. 1313 exempts all wellness plans offered through employer-sponsored health plans from the ADA, thereby giving unscrupulous employers permission to discriminate or retaliate against employees with disabilities.
  - H.R. 1313 fails to provide any safeguards on how collected information can be used or where it could be sold.

- Undermine effective enforcement of civil rights laws
  - H.R. 1313 would inhibit the EEOC’s ability to fulfill its statutory obligations and undermine the EEOC’s authority to protect workers by setting a dangerous precedent that allows so-called wellness programs from being exempted from civil rights laws.
  - H.R. 1313 chips away at the safe harbor provision in the ADA law exempting employer wellness plans from the law – thereby circumventing reasonable accommodation or retaliation protections.
  - H.R. 1313 would have the effect of amending GINA by empowering employers to collect the genetic information of children and other family members as a condition for an employee to participate in an employer-sponsored wellness plan that encourages healthy eating and exercise.