



LOUISE M. SLAUGHTER
CONGRESS OF THE UNITED STATES
25TH DISTRICT, NEW YORK

September 23, 2013

The Honorable Jacqueline A. Berrien, Chair
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

The Honorable Constance S. Barker, Commissioner
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

The Honorable Chai Feldblum, Commissioner
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

The Honorable Victoria A. Lipnic, Commissioner
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

The Honorable Jenny Yang, Commissioner
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

Dear Commissioners Berrien, Barker, Feldblum, Lipnic, and Yang:

I want to bring your attention to a series of stories recently published in the *New York Times*¹ detailing a wellness program that coerces private health information from participants, a practice that could violate several federal nondiscrimination laws, including the Genetic Information Nondiscrimination Act (GINA). As described in the articles, employees “voluntarily” submitted to an online health assessment that requested sensitive and personal health information. Employees who refused to participate were charged a \$100 noncompliance fee per month.

While the employer wellness program has recently suspended this fee, their plan still raises concerns about the type of information that can be collected through wellness programs and the definition of “voluntary” participation. I have previously raised similar concerns to the EEOC and remain concerned about these predatory and coercive programs. It is my strong hope that EEOC promptly drafts sub-

¹ Singer, N. (14 September 2013) On Campus, a Faculty Uprising Over Personal Data. *New York Times*.
<http://www.nytimes.com/2013/09/15/business/on-campus-a-faculty-uprising-over-personal-data.html?pagewanted=all>

Singer, N. (18 September 2013). Health Plan Penalty Ends at Penn State. *New York Times*.
<http://www.nytimes.com/2013/09/19/business/after-uproar-penn-state-suspends-penalty-fee-in-wellness-plan.html>

regulatory guidance stopping this type of abuse and ensuring strong nondiscrimination protections for employees in wellness programs.

I authored the Genetic Information Nondiscrimination Act (GINA) to provide Americans with strong protections against discrimination on the basis of their genetic information in both health insurance and employment. The law was purposefully written to give employees the right to keep their genetic information private and to ensure that those who did so were not penalized. GINA states that the employee must provide "... prior, knowing, voluntary, and written authorization" any time that individually identifiable genetic information is provided as part of an employer wellness program. Participation in wellness programs is not voluntary when employees who refuse to disclose their genetic information are at a financial disadvantage – a disadvantage which can be quite steep, totaling \$1,200 per year in the case of the plan in the recent *New York Times* stories.

Any employer wellness plan that coerces employees to provide genetic information through monetary incentives would violate the core intent of GINA and other civil rights laws' protections. While I am not aware that any genetic or family history information was requested in the case of this particular wellness program questionnaire, and therefore cannot make the determination that GINA was violated in this case, I want to be clear that this practice of attaching monetary penalties or benefits to participation in wellness program is rife with the possibility for such abuse and must be addressed.

I believe that employee wellness programs can be successful without the collection of family history, genetic information, and other sensitive personal information. Programs that encourage regular exercise and healthy eating habits benefit all employees, regardless of health or genetic status. However, collection of genetic data as part of an employee wellness plan can be used for discrimination, either by setting insurance rates or targeting individuals for specific plans, and that cannot be permitted.

I encourage you to carefully examine the voluntary nature wellness programs and to promptly issue sub-regulatory guidance for wellness program compliance with federal nondiscrimination legislation, which will ensure strong civil rights protections for all Americans.

Sincerely,

A handwritten signature in blue ink that reads "Louise M. Slaughter". The signature is fluid and cursive, with the first name "Louise" and last name "Slaughter" being the most prominent parts.

Louise M. Slaughter
Member of Congress

CC: Secretary Kathleen Sebelius, Health and Human Services