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November 14, 2014

The Honorable Sylvia Mathews Burwell
Secretary
United States Department of Health
and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Jacob Lew
Secretary
United States Department of the
Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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The Honorable Thomas E. Perez
Secretary
United States Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretaries Burwell, Lew, and Perez:

I am writing on behalf of the Business Roundtable to express my strong disappointment with the efforts of the United States Equal Employment Opportunity Commission (EEOC) to take actions against large employers who are complying with the requirements of the Patient Protection and Affordable Care Act, Pub. L. 111-148, and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (collectively, the ACA). In particular, the EEOC has targeted employers by filing lawsuits against employers that have established ACA compliant wellness programs, undermining both the statutory provisions of the ACA that expressly permit employers to establish wellness programs (ACA § 1201 (establishing Public Health Service Act (PHS Act) § 2705) (42 U.S.C. 300gg-4)) and the regulations promulgated by your Departments to implement such provisions¹. I am writing to ask that you personally engage on this matter to defend the ACA and thwart all future inappropriate actions against employers who are complying with these provisions.

Wellness programs empower employees to take control of their health. When employers establish wellness programs expressly authorized under PHS Act § 2705 and the implementing regulations, they do so for many reasons. First and foremost, these programs educate employees on their existing health risk

¹ Incentives for Nondiscriminatory Wellness Programs in Group Health Plans, 78 Fed. Reg. 33,158 (Jun. 3, 2013) (to be codified at 26 C.F.R. pt. 54, 29 C.F.R. pt. 2590, and 45 C.F.R. pts. 146 and 147).

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factors. These programs then provide employees with motivating incentives that encourage them to take action towards improving health risk factors that may result in longer term health problems. Understanding certain health risk factors – such as cholesterol levels, high blood pressure, and blood sugar (i.e., diabetes risk) – allows an employee to take full advantage of their employer sponsored health insurance coverage and access the resources necessary to improve their health. Empowering employees with the knowledge of their health status, with the health care tools, and with the support system needed to improve their wellbeing, is the right thing to do.

The deadline is rapidly approaching for most employers to begin offering health insurance coverage to their full-time employees if they do not already do so. For many employers, wellness programs are playing and will play an integral part in the benefits design of such coverage offerings. If employers believe that complying with the letter of the law can still result in enforcement actions, it will send a chilling effect across the country. Allowing the EEOC to act in contravention to the positive provision of the ACA without reproach from the Departments charged with governing and overseeing these programs will send a message to employers that certain ACA provisions are interpretative only and remain subject to litigation. It is a shameful day when well-intentioned and well-informed reliance on regulations, driven by the good will of employers to offer positive, innovative programs to their employees, can result in litigation.

I appreciate, in advance, your work to address this issue. Employer-sponsored coverage is a valued benefit that over 40 million Americans receive through Business Roundtable members. We do not want to see the kinds of actions taken by the EEOC undermine law and negate the benefits of these plans.

Sincerely,

A handwritten signature in black ink that reads "John Engler". The signature is written in a cursive, flowing style.

John Engler

JE/mg