



## **Workplace Wellness Programs and GINA: Are Employers in Compliance?**

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Congress enacted the Genetic Information Nondiscrimination Act (“GINA”) in 2008 in response to concerns that advancements in the field of genetics could lead to discrimination against individuals in the areas of health insurance and employment. Broadly speaking, GINA prohibits employers from requesting, requiring, or purchasing the genetic information of an employee or an employee’s family member.

GINA recognizes “genetic information” as an individual’s genetic tests, a family member’s genetic tests, a family member’s medical history, or the individual’s receipt of genetic services. Genetic information does not include an individual’s age, gender, health history or current diagnosis.

Federal regulations implemented in 2010 provide additional guidance for compliance with GINA. The regulations indicate that GINA prohibits employers from offering financial incentives to individuals who provide genetic information. Employees may offer genetic information voluntarily, but they cannot be penalized if they choose not to provide it. GINA is meant to prohibit employers from using an employee’s genetic information as the basis for making employment decisions, setting premiums for group health insurance, or providing other privileges of employment.

The GINA regulations contain a limited exception for genetic information that employees provide as part of an employer’s wellness program. Employee wellness programs are meant to improve employee well-being and boost productivity while also curtailing rising health care costs. Wellness programs encourage employees to take preventive measures and make healthier choices. Health Risk Assessments (“HRAs”), health questionnaires designed to evaluate an individual’s health risks and quality of life, are an integral part of wellness programs.

Under the GINA’s wellness exception, a wellness program may acquire genetic information where: (1) the employee provides prior, knowing, voluntary and written authorization; (2) only the employee and the family member and the licensed health care professional receive the information; and (3) individually identifiable genetic information is only available for the purposes of health and/or wellness services and will not be disclosed to the employer except in the aggregate and without disclosing individual identity.

The regulations also provide something of a safe harbor where aggregate information makes the genetic information of a particular employee readily identifiable. An employer is not in violation of GINA if they receive this information for reasons

outside of their control or the control of the information provider and if an individual's information is readily identifiable with no effort on the part of the employer.

Overall, employers should be mindful of GINA when drafting wellness program documents that request genetic information, especially enrollment forms and health risk assessments. At the very least, employers are advised to discuss the topic of GINA compliance with their wellness program provider.