

**Genetic Information Discrimination**

**October 2009**

Effective November 21, 2009 employers will be subject to a new set of federal rules regarding the use of genetic information. The Genetic Information Nondiscrimination Act (GINA) prohibits employers from making employment decisions based on genetic information. The law covers all private employers with 15 or more employees as well as all public sector employees. Under the law, employers may not request employees to undergo genetic testing, use information from such tests taken by an employee or family member, or consider family medical histories. Family members are defined as all relatives to the fourth degree, whether by blood or marriage, or adoption.

In cases where an employer unintentionally acquires genetic information; through a request for FMLA for instance, the information should be securely stored in a separate medical file. Genetic information is also considered “protected health information” under HIPAA and is subject to all of that law’s protections.

The Act also prohibits health insurers and group plans from requiring genetic testing or using genetic information to deny coverage or set premiums or deductibles. As a result, the law will stop the common practice of rewarding workers with lower premiums or one-time payments for providing family medical histories when completing health risk assessments.

Employers who sponsor wellness programs will also be affected. Current programs that reward those providing family medical histories through a premium or cost sharing reduction

must end. Only where there is no financial reward or penalty attached to the supplying of a family medical history may the wellness plan sponsor request the information.

Employers should review their anti-discrimination policies and update them to include the GINA requirements. The largest impact for most firms will be to make sure any pre-employment medical examination documentation does not include genetic information, including typical family medical histories. Also companies must post a new EEOC workplace poster to replace the current version. It can be obtained at [www.eeoc.gov/posterform.html](http://www.eeoc.gov/posterform.html).

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