

NOW A FEDERAL LAW, GINA AIMS TO PREVENT GENETIC-BASED DISCRIMINATION

Labor & Employment Alert
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Practices & Industries

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After 13 years of debate in Congress, President Bush has signed the Genetic Information Act of 2008 (GINA) into law. GINA is designed to prevent a growing concern throughout the nation — genetic-based discrimination in the areas of employment and health insurance.

GINA has been hailed as this century's first major civil rights act. GINA prohibits health insurers and group health plans from, among other things, charging higher premiums or contribution amounts based on an individual's genetic information, which includes any medical information related to an employee's genetic testing or the actual manifestation of a genetic disease or disorder. GINA also prohibits employers from discriminating against current or prospective employees based on available genetic information. Essentially, an employer cannot hire, fire, refuse to hire, segregate, or otherwise deprive any employee or prospective employee of employment based on genetic information.

To prevent employment decisions based on genetic information, GINA generally prohibits employers from purchasing, requesting, or requiring the production of such information. There are several exceptions to this rule. For example, an employer may request an employee's family medical history in order to comply with the certification provisions of the Family and Medical Leave Act (FMLA). Also, an employer is not prohibited from purchasing commercially available materials, such as newspapers or magazines, which contain genetic information. But under no circumstances may an employer take action based upon genetic information contained therein. And under GINA, if an employer ever receives genetic information, it is required to protect such information and may not disclose it unless specifically permitted under law. Genetic information must be maintained in a separate medical file and must be treated as a confidential medical record.

Employers that violate GINA will face harsh consequences. Potential remedies for violations include, as deemed appropriate: front pay; back pay; and compensatory, emotional, and punitive damages. GINA is scheduled to take effect on November 21, 2009. To ensure compliance, all relevant members of your business or company should be made aware of GINA's directives.

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Finally, although GINA is a new federal law, many of its directives have been in effect for years in New York under Executive Law §296 (New York Human Rights Law), which has prohibited discrimination based on genetic predisposition since 1996. So in essence, New York has laid the groundwork for this historic federal legislation.

The Bottom Line for Employers: Unless required to do so under the law, do not request genetic information during or after the hiring process. If you do come to possess such information, do not use it as the basis for any employment decision and keep it confidential.