

LABOR & EMPLOYMENT LAW UPDATE

Beginning November 21, 2009, Employers Must Comply with the Federal Genetic Information Nondiscrimination Act

On November 21, 2009, the federal Genetic Information Nondiscrimination Act (GINA) will take effect. Title II of GINA applies to the terms and conditions of employment and is applicable to employers with 15 or more employees.

GINA provides a baseline level of protection against genetic discrimination for all Americans and supplements the laws that some states may already have in place that protect against genetic discrimination in health insurance and employment situations. More specifically, GINA prohibits covered employers from using genetic information for hiring, firing, or promotion decisions, and for any decisions regarding terms or conditions of employment.

Employers must comply with GINA as of November 21, 2009. One aspect of compliance is posting information about GINA on employee bulletin boards and/or in other conspicuous places in the workplace.

The Equal Employment Opportunity Commission (EEOC) has just revised its “Equal Employment Opportunity is the Law” poster to reflect changes required by the employment provisions (Title II) of GINA. The following language has been added to the poster:

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers’ acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

Employers covered by GINA should obtain and post this revised poster, or the poster supplement addressing GINA. Both are available at www.eeoc.gov. Additionally, employers should update their anti-discrimination policies to specifically reference genetic discrimination or to make sure that their policies at least contain “catch-all

language” that prohibits discrimination based on any characteristic protected by applicable law.

“Genetic Information” is information about: an individual’s genetic tests (including those done as part of a research study); genetic tests of the individual’s family members (up to the 4th degree); genetic tests of any fetus of an individual or family member who is a pregnant woman; the manifestation of a disease or disorder in family members (i.e. family history); and any request for, or receipt of, genetic services or participation in clinical research that includes genetic services (testing, counseling or education) by an individual or family member. Information about the age or sex of an individual is not included under the umbrella of “genetic information.”

A genetic test is “an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.” The results of routine tests like complete blood counts, cholesterol tests, and liver-function tests are not protected under GINA. Additionally, genetic tests do not include analyses of proteins or metabolites that are directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with expertise in that medical field.

GINA will not be retroactive, but employers will be prohibited from discriminating based on any genetic information that they had already collected before GINA’s effective date.

The EEOC is responsible for enforcing Title II of GINA. Impacted individuals may file a charge of discrimination with the EEOC and thereafter pursue private litigation in federal court.

Should you have any questions regarding GINA or any other employment-related matters, please contact Amy Jenkins at 843-576-2917 or amy.jenkins@mgclaw.com; Edward Rawl at 803-227-4930 or erawl@mgclaw.com, Webster Harrison at 919-719-8209 or webster.harrison@mgclaw.com or Tracey Downs at 704-643-6303 or tracey.downs@mgclaw.com.

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