



GINA Law - Practical Tips For Employers

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Foster Swift Employment, Labor & Benefits Quarterly
Summer 2010

PRACTICE AREAS

Employment Law

Labor Relations

Do you need a written Handbook policy about GINA? How does GINA affect your wellness program?

GINA applies to employers with 15 or more employees, and interim regulations are now in effect for employers and health insurers. GINA prohibits discrimination by health insurers and employers based on any individual's "genetic information." The scope of the term "genetic information" includes the results of genetic tests to determine whether someone is at increased risk of acquiring a condition in the future, as well as an individual's family medical history. So, genetic information protected by GINA includes information about an applicant, employee or family member, family medical history in general and requests for or receipt of genetic services by applicants, employees or their family members.

The employment-related provisions of GINA are similar to other anti-discrimination laws. Genetic information cannot be a factor in employer decisions about hiring, termination or referral or in other decisions regarding compensation, terms, conditions, or privileges of employment. Also, retaliation for opposing an act or practice made unlawful by GINA is prohibited. Further, employers may not:

- request, require or purchase genetic information about an employee or an employee's family member; or
- except as allowed by GINA, use such information to:
 - satisfy certification requirements of the Family Medical Leave laws,
 - monitor the biological effects of toxic substances in the work place,
 - or under certain other conditions specifically allowed by GINA.

In those circumstances where genetic information is maintained, the information must be kept on separate forms and separate medical files. The information must be treated as confidential medical records and not disclosed, except in certain limited situations.



WRITTEN POLICY

GINA does not require that employers provide a written GINA policy statement to their employees. Many employers may opt only to include "genetic information" in the list of protected classifications in their Equal Employment Opportunity statement. Certain other types of employers may wish to implement a brief written GINA policy. A manufacturing or laboratory employer, for example, may deal with GINA-type information frequently because of the need to monitor potential safety hazards. A written policy statement will make clear what is required and permitted with regard to obtaining and maintaining that information. For example, inquiries regarding fitness-for-duty testing or reasonable accommodations should not include questions about family history. But, employees still must provide the minimal information necessary to confirm the need for FMLA leave for caregiver purposes. Additionally, all employees should be sensitive to the scope of day-to-day discussions and avoid discussion of an employee's individual or family history.

HEALTH ASSESSMENT INFORMATION

Employers also should be aware of the GINA provisions that prohibit collection of genetic information by health insurers and health plans, including as part of an employer's wellness program or insurance enrollment requirements. GINA prohibits group health plans from restricting enrollment, imposing pre-existing condition exclusions, and adjusting premiums based on genetic information or genetic services. GINA also prevents group health plans and insurance companies from requesting or requiring that an individual take a genetic test. Further, under GINA, no rewards or penalties may be offered in conjunction with a health risk assessment (HRA) that requests genetic information, including family medical history, even if the request is made after the enrollment. Accordingly, employers should review all wellness and disease management plans to determine how HRAs are used and what information is requested to eliminate any questions or programs that might violate GINA.
