



Updates

Employment & Discrimination Law

Genetic Information Discrimination Act Creates New Challenges for Employers

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Every person has their own unique genetic makeup that could make them more or less susceptible to certain diseases such as diabetes, heart disease, or cancer. Tests now exist that can identify every person's DNA makeup and determine a person's risk for several diseases. Moreover, many U.S. companies often learn or collect significant data about their employees' health and medical conditions.

While the Genetic Information Discrimination Act (GINA) should ease employee's concerns about discrimination in the workplace regarding their genetic predispositions, employers are now required to ensure that their employees are not discriminated against based upon their genetic information.

GINA applies to all private employers and makes it an unlawful employment practice for them to discriminate against any employee on the basis of his or her genetic information. The law specifically prohibits employers:

1. To fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges

of employee, because of genetic information with respect to the employee; or

2. To limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of an employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.

Generally, genetic information is defined by the new law to include:

1. An individual's genetic test;
2. The genetic test of an individual's family member, and
3. The manifestation of a disease or disorder in an individual's family members. With certain exceptions, it is now also an unlawful employment practice under GINA for an employer to request, require or purchase genetic information with respect to an employee or an employee's family members.

Employer liability under GINA is substantively similar to the liability that may be imposed on employers under other federal civil rights laws. Successful litigants will be entitled to compensatory and punitive

damages in the same manner as provided to prevailing plaintiffs under 42 U.S.C. §1981a, in addition to receiving their attorneys' fees as provided for in 42 U.S.C. §1988.

GINA does not go into effect until November 2009, giving employers time to review their policies and adapt procedures to ensure compliance and minimize the risk of lawsuits. The Equal Employment Opportunity Commission is responsible for the enforcement of GINA's requirements. It is anticipated that new regulations will be adopted by the EEOC, which will provide employers with guidelines for adapting to the laws' new requirements. Stay tuned for new regulations to be issued by the EEOC.

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