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New Federal Regulations on Genetic Information Must Be Applied by Employers

Nearly one year after the effective date of the Genetic Information Nondiscrimination Act (GINA), the Equal Employment Opportunity Commission (EEOC) has issued final regulations implementing GINA that are intended to provide guidance to employers on how the law will be applied. GINA is intended to protect individuals from discrimination by employers and other covered entities based on genetic information, such as family medical history, and restricts the acquisition of genetic information and limits disclosure of this information. It also prohibits harassment based on genetic information and associated retaliation.

The final rule specifically includes examples of genetic testing such as an amniocentesis test or DNA test that reveals a family relationship such as paternity. The final rule also lists examples of tests or procedures that are not genetic tests. It also permits an exemption that allows employers to request family medical history to comply with certification provisions of the FMLA or other local or state family and medical leave laws and addresses the acquisition of information through social networking sites.

Employers should be aware that the final rule removes the “deliberate acquisition” intent requirement. An employer who requests medical information for a lawful purpose could violate GINA if it fails to utilize a warning statement that genetic information should not be included. If a warning statement is not used and genetic information is provided, the EEOC will likely take the position that the employer requested genetic information. Although the request was not intentional, no intent is required to violate GINA. However, inadvertently acquiring genetic information will not violate GINA. An employer who accidentally overhears a conversation involving medical information between employees at the water cooler would likely be protected under the inadvertent acquisition exception as the information was not requested.

The key take-away for employers is that they should avoid acquiring knowledge about genetic information. Employers should review practices and procedures to ensure that genetic information is not being sought out or inadvertently obtained through medical questionnaires, and handbooks and EEO policies should be updated. In addition, supervisors, management and human resources personnel should be trained to avoid asking questions that will lead to genetic information disclosure.



FOR MORE INFORMATION

For detailed background on GINA, please see our previous bulletins (www.ThompsonHine.com/publications/publication1430.html and www.ThompsonHine.com/publications/publication1997.html) and webinar (www.ThompsonHine.com/publications/publication2046.html).

A link to the EEOC model language to utilize when requesting medical information can be found at www.ThompsonHine.com/publications/pdf/2010/11/eecmodellanguage.pdf.

For more information, please contact Staci M. Jenkins, 513.352.6734 or Staci.Jenkins@ThompsonHine.com, or any Thompson Hine **Labor & Employment** lawyer.

If you do not wish to receive future communications by email, please send an email with “unsubscribe: Employment @lert” in the subject line to Heidi.Moreno@ThompsonHine.com.

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