U.S. Equal Employment Opportunity Commission

Fact Sheet: Genetic Information Nondiscrimination Act

This guidance document was issued upon approval of the Chair of the U.S. Equal Employment Opportunity Commission.

OLC Control Number:

EEOC-NVTA-0000-4

Concise Display Name:

Fact Sheet: Genetic Information Nondiscrimination Act

Issue Date:

09-09-2014

General Topics:

ADA/GINA

Summary:

This document provides basic information about the Genetic Information Nondiscrimination Act, including the definition of genetic information under the law.

Citation:

ADA, Rehabilitation Act, 29 CFR Part 1630

Document Applicant:

Employees, Employers, Applicants, HR Practitioners

Previous Revision:

No

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Title II of the Genetic Information Nondiscrimination Act (GINA) protects individuals against employment discrimination on the basis of genetic information. GINA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies, labor organizations, joint labor-management training and apprenticeship programs, and the federal government.

Definition of Genetic Information

Genetic information means:

- Information about an individual's genetic tests;
- Information about the genetic test of a family member;
- Family medical history;
- Requests for and receipt of genetic services by an individual or a family member; and
- Genetic information about a fetus carried by an individual or family member or of an embryo legally held by an individual or family member using assisted reproductive technology.

Employment Decisions

GINA prohibits the use of genetic information in making employment decisions, such as hiring, firing, advancement, compensation, and other terms, conditions, and privileges of employment. For example, it would be illegal for an employer to reassign an employee from a job it believes is too

stressful after learning of his family medical history of heart disease. There are no exceptions to the prohibition on using genetic information to make employment decisions.

Acquisition of Genetic Information

GINA also prohibits employers from requesting, requiring, or purchasing genetic information about applicants or employees, except in very narrow circumstances. For example, it is illegal for an employer to require an applicant or employee to answer questions about family medical history during an employment-related medical exam, such as a pre-employment exam or a fitness for duty exam during employment.

There are six very limited circumstances under which an employer may request, require, or purchase genetic information:

- Where the information is acquired inadvertently, in other words, accidentally;
- As part of a health or genetic service, such as a wellness program, that is provided by the employer on a *voluntary* basis;
- In the form of family medical history to comply with the certification requirements of the Family and Medical Leave Act, state or local leave laws, or certain employer leave policies;
- From sources that are commercially and publicly available, including newspapers, books, magazines, and electronic sources (such as websites accessible to the public);
- As part of genetic monitoring that is either required by law or provided on a *voluntary* basis; and
- By employers who conduct DNA testing for law enforcement purposes as a forensic lab or for human remains identification.

Lawful Requests for Health-Related Information

Because GINA prohibits employers from requesting, requiring, or purchasing genetic information about an individual, when an employer asks for information about an applicant's or employee's current health status (e.g., to support an employee's request for reasonable accommodation under the ADA or a request for sick leave), it should warn the employee and/or the employee's health care provider from whom it is requesting the information not to provide genetic information.

An employer *must* tell its own health care providers not to collect genetic information as part of employment-related medical exams when it sends an applicant or employee for a medical examination.

Confidentiality of Genetic Information

Employers must keep genetic information about applicants and employees confidential and, if the information is in writing, must keep it apart from other personnel information in separate medical files. There are six limited circumstances under which an employer may disclose genetic information:

- To the employee or family member about whom the information pertains upon receipt of the employee's or family member's written request;
- To an occupational or other health researcher conducting research in compliance with certain federal regulations;
- In response to a court order, except that the covered entity may disclose only the genetic information expressly authorized by the order;
- To government officials investigating compliance with Title II of GINA, if the information is relevant to the investigation;
- In accordance with the certification process for FMLA leave or state family and medical leave laws; or
- To a public health agency only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness.

Other Protections

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on genetic information or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under GINA. For example, it would be unlawful for an employer to transfer an employee to a less prestigious position after the employee complains of employer's attempt to acquire genetic information during a fitness for duty exam.

GINA also prohibits harassment on the basis of genetic information, such as offensive and derogatory comments about an individual's genetic information that are sufficiently severe or pervasive to create a hostile work environment.