

Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

PUBLISHED BY



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EEOC Issues Final Regulations Interpreting Federal Genetic Information Nondiscrimination Act of 2008

Posted at 9:58 AM on November 16, 2010 by Randi W. Kochman

On November 9, 2010, the Equal Employment Opportunity Commission (“EEOC”) issued final regulations interpreting Title II of the federal Genetic Information Nondiscrimination Act of 2008 (“GINA”), which addresses GINA’s employment provisions. GINA is the federal law that bans employment discrimination based on an individual’s genetic information. GINA went into effect on November 21, 2009. The regulations will assist employers in understanding the law’s provisions. The regulations and questions and answers can be found at <http://eoc.gov/laws/types/genetic.cfm>.

GINA prohibits “covered entities”, which includes employers with 15 or more employees, from “requesting, requiring or purchasing” an employee or former employee’s “genetic information” and from making employment decisions based on such information. GINA also provides that an employer that obtains an individual’s protected genetic information is required to keep the data private in the same manner as the employer is required to maintain the confidentiality of information protected by the Americans with Disabilities Act.

The regulations establish certain exceptions pursuant to which an employer may be permitted to obtain an employee’s genetic information. These exceptions include, but are not limited to, inadvertent acquisition and voluntary disclosure of genetic information, as well as obtaining genetic information in response to an employer’s need to assess a requested leave under the Family and Medical Leave Act.

Employers that violate GINA are subject to the same damages as provided in Title VII of the Civil Rights Act including compensatory damages, punitive damages, attorneys' fees, interest and costs of suit.

The import of GINA and the final regulations is that employers must insulate themselves from learning of employees' genetic information. In this regard, employers should immediately train supervisory employees and modify medical request forms to make clear that the employer is not interested in obtaining applicants' or employees' genetic information.

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