

## **New GINA Regulations Add New Fine Print**

Your communications with your employees' medical providers should now contain a new disclaimer. Failing to include it could trigger trouble with the EEOC.

The Genetic Information Non-Discrimination Act (GINA) generally prohibits you from requesting genetic information on your employees. The EEOC recently issued new regulations on GINA. According to the regulations, the trouble comes when you ask for information from your employees' health care providers.

You have several legitimate reasons to ask questions about your employees' health care. For example, you might ask for medical information about an FMLA certification or an ADA reasonable accommodation. Here's the problem—the health care provider may accidentally disclose genetic information that would land you in hot water.

While inadvertent requests for genetic information are safe, the regulations seem to say that the EEOC can question your communications with a health care provider if you ask for information. Any FMLA or ADA request necessarily asks for medical information to help you understand your employee's condition. You can, however, include this EEOC-approved disclaimer to give you a safe harbor:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.



**Alan Bush**  
281.296.3883  
abush@bush-law.com

**Bush Law Firm**  
[bush-law.com](http://bush-law.com)

### **HR Risky Business**

For more insight into how solid HR practices impact your company's strategic operations, visit Alan's employment law blog at [hrriskybusiness.com](http://hrriskybusiness.com).

[Federal Discrimination and Harassment Laws](#)

[Genetic Information Non-Discrimination Act \(GINA\)](#)

Save yourself a headache. Add this disclaimer to your FMLA and ADA reasonable accommodation forms. For that matter, add it anyplace else where you're asking for medical information on your employees.

