

Law of the Workplace

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CLIENT ALERT

GINA's Employment Protections and Posting Requirements Effective November 21, 2009

In just over a week, Title II and the posting requirements of the Genetic Information Nondiscrimination Act of 2008 ("GINA"), a federal law prohibiting discrimination in health coverage and employment based on genetic information, become effective. Title I of GINA, which concerns health coverage discrimination, became effective May 21, 2009. On November 21, 2009, Title II, the section concerning prohibitions in employment discrimination, and the statute's posting requirements go into effect.

GINA applies to "private and state and local government employers with 15 or more employees, employment agencies, labor unions, and joint labor-management training programs." The statute prohibits the use of genetic information in making decisions related to hiring, firing, or any other terms, conditions or privileges of employment. GINA also bans intentionally obtaining genetic information of an employee/applicant or an employee's/applicant's family member. Where a covered entity acquires an employee's/applicant's genetic information, GINA provides strict confidentiality requirements. Moreover, similar to other nondiscrimination statutes, GINA prohibits retaliation against an employee/applicant exercising rights under the statute. However, GINA protects unintentionally asking for family medical history from liability.

Under the statute, "genetic information" includes data about an employee's/applicant's genetic tests and medical history. "Genetic information" also includes information about an employee's/applicant's family member's genetic tests and medical history. In fact, "genetic information" also includes the incidence of diseases or disorders in a person's family. "Genetic information" does not include age and gender.

GINA does not preempt state laws that provide greater protections against disclosure of genetic information. GINA's remedies mirror those of Title VII of the Civil Rights Act of 1964 and include back pay, front pay, reinstatement, compensatory damages, attorneys' fees, costs and punitive damages against certain covered entities.

GINA's posting requirements affect the "Equal Employment Opportunity is the Law" poster. In that regard, employers have two options. Employer's may use a completely revised version of the "Equal Employment Opportunity is the Law" poster or opt to display a supplement to alongside the current poster. GINA permits employers to use either at their discretion.

Employers should review their applications and company policies and procedures to remove any questions or references regarding genetic information. Additionally, employers should know that GINA may affect company wellness programs and discuss the implications with an attorney.

Employers with questions regarding GINA, its affect on your business or any employment law issues may call the attorneys of Siegel, O'Connor, O'Donnell & Beck, P.C. at 860-727-8900 or by visiting us online at www.siegelconnor.com.

This material is intended to provide you with information regarding a noteworthy legal development. It should not be regarded as a substitute for legal advice concerning specific situations in your operation. If you have any questions or would like additional information on this topic, please contact our Firm at (860) 727-8900 or www.siegelconnor.com.

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