

## Are ANCSA Corporations subject to GINA?

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In November 2010, the Equal Employment Opportunity Commission issued its final regulations governing Title II of the Genetic Information Nondisclosure Act (GINA) (Title II establishes GINA's employment-related provisions).

GINA applies to all private employers, state and local governments, and educational institutions that employ 15 or more individuals. GINA also covers private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training.

However, although no court has faced this question yet, preliminary analysis suggests that corporations operating under the Alaska Native Claims Settlement Act (ANCSA) should *not* be subject to GINA.

GINA expressly incorporates Section 701(b)(1) (Title VII's definition of "employer") to define "employer," meaning that Indian Tribes are excluded. ANCSA provides that Native Corporations, partnerships, joint ventures, trusts, or affiliates in which a Native Corporation owns not less than 25 percent of the equity are excluded from the definition of "employer" under section 701(b)(1) of Title VII. See 43 U.S.C. 1626(g).

Therefore, since GINA incorporates the same definition, and since ANCSA corporations are excluded or exempted from that definition, it would seem that they should not be subject to GINA.

As noted, no court has faced or resolved this specific question yet. Therefore, ANCSA corporations should confer with counsel. Even if they are not subject to GINA, there may be independent reasons to adopt GINA-related workplace policies. In addition, the Alaska Human Rights Act (AHRA) may eventually be amended to include GINA-related protections and, if that happens, ANCSA corporations may be subject to AHRA because the Alaska State Commission for Human Rights (ASCHR) has long taken the position that ANCSA corporations are subject to state claims filed under AHRA (*ASCHR v. Eyak Village Corp.*). However, for the time being, there would seem to be good arguments that GINA does not apply to ANCSA corporations.

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