

The Nation's First Genetic Discrimination Claim?

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While I can't say for sure that this is the first, I can say that it's the first that I've seen publicized: a woman in Connecticut has brought a claim that her former employer engaged in genetic discrimination.

According to the news story, the woman informed her employer about genetic test results that indicated she had a genetic predisposition for breast cancer and would be having a double mastectomy as a precautionary measure. Six weeks after her surgery, the company eliminated her position. She has now filed complaints with the U.S. Equal Opportunity Commission and with the Connecticut Commission on Human Rights and Opportunities. The employer denies that the allegations are true.

I've blogged before about the Genetic Information Nondiscrimination Act and its impact on health risk assessments used by wellness programs. After reading this, I also wonder if GINA creates incentives for employees to try to set up genetic nondiscrimination claims—especially when they anticipate that they may be victims of a downsizing? Could it be that employees who can see the writing on the wall will start seeking out managers and telling them about genetic tests and their family medical history (which is considered a genetic test under GINA), perhaps hoping that this will either protect their position or be the basis for a discrimination claim? It seems that cautious employers may want to carefully document their decisions regarding terminations and downsizings—especially if employees start volunteering genetic information.

If you need help complying with GINA or other privacy laws, Warner Norcross & Judd can help. Give us a call!

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