

## **Genetic Information Nondiscrimination Act**

At one time or another – whether at the doctor’s office or when applying for health insurance – most of us have been asked about our family medical history. But if you are an employer, such questions can no longer be asked.

Now that federal agencies are implementing and enforcing the 2008 Genetic Information Nondiscrimination Act, or “GINA,” employers (along with insurers and health care providers) face the potential for liability if they discriminate on the basis of “genetic information.” Genetic information includes information about any disease or disorder in the family history of an individual including cancer, heart disease, etc. According to the EEOC, “The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment.” In fact, the law prohibits an employer from even **requesting** genetic information from an employee or applicant. Therein lies the area most problematic for employers.

The most common situation where an employer in the past requested genetic information was the post-offer physical examination. While it is still acceptable to require your prospective hires to undergo a post-offer physical, be certain that in connection with physical exam the examining healthcare provider does not ask for genetic information. Normally an employer can decline to hire an applicant if his or her post-offer physical reveals that the applicant is not qualified for the job. However, if the post-offer physical includes disclosure of the applicant’s family medical history, the employer risks a lawsuit alleging that the decision to not hire was based on the applicant’s genetic information.

Employers can protect themselves from claims under GINA by making sure that all human resource and compliance personnel are familiar with the law. Review your internal employment policies and procedures to ensure that genetic information isn't being requested or inadvertently disclosed. And perhaps most critically, check that your outside insurance, medical and business health vendors are in full compliance with GINA. As always, the front-end costs of compliance are significantly less than the costs associated with violations of the law.

263165vvv1