

CLIENT ALERT

MARCH 2010

Title II of GINA Becomes Effective November 19, 2009

On May 21, 2008, President Bush signed into law the Genetic Information Nondiscrimination Act of 2008 (GINA). Title II of the Act applies to employers with 15 or more employees.

- ***Purpose of GINA.*** Advances in the fields of genetics and testing have now made it possible to identify individuals at risk for developing specific diseases and disorders. As this information becomes more accessible, the concerns about the use of such information by employers and health insurers become greater. Title II of GINA was enacted to prohibit employers from intentionally acquiring genetic information about applicants and employees and to protect the confidentiality of such information.
- ***Genetic information defined.*** The definition of “genetic information” includes not only an individual’s genetic tests, but also the genetic tests and medical history of family members.
- ***Prohibited practices.*** Employers are prohibited from requesting, requiring or purchasing genetic information of an applicant or employee. They are also prohibited from using such information in connection with the terms, conditions or privileges of employment.
- ***Confidentiality requirements.*** Employers who have possession of genetic information must keep it confidential and treat it the same way as medical information generally. Employers may keep genetic information in the same file as medical information subject to the American with Disabilities Act.
- ***GINA’s impact on other nondiscrimination laws.*** GINA does not limit the rights that exist under other nondiscrimination statutes or any law that provides equal or greater protection.
- ***Compliance in the workplace.*** In order to comply with GINA, employers should immediately take the following actions: (1) revise your handbooks and other policies to include “genetic information” retaliation in sections prohibiting other types of discrimination and retaliation, (2) post the new EEO nondiscrimination poster that

includes “genetic information”, (3) inform and train others within your company about compliance with GINA, (4) work with legal counsel to modify forms, such as requests for fitness for duty exams or requests for leave, to eliminate any requests for genetic information, and (5) ensure that all genetic information is being currently held in a confidential medical file with limited access provided.

If you would like to speak to someone about these or other aspects of the GINA law, please contact Diane DeGiacomo, Chair of our Employment Law Group.

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