

Are You Ready for GINA in Your Workplace?

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

The employment provisions of the Genetic Information Nondiscrimination Act of 2008 (“GINA”) took effect on November 21, 2009. GINA is designed to prohibit employers and health insurers from discriminating against individuals based on genetic tests and information.

Genetic Information

GINA defines “genetic information” as information about:

- (1) An individual’s genetic tests;
- (2) Genetic tests of the individual’s family members (defined as dependents and up to and including 4th degree relatives);
- (3) Information about any disease, disorder, or condition of an individual’s family members;
- (4) Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by an individual or family member.

“Genetic information” does not include information about the sex or age of an individual.

Impact on Employers

GINA’s employment provisions apply to employers with 15 or more employees, employment agencies, and labor organizations. Generally, GINA impacts an employer’s use and collection of genetic information.

Under GINA, except for limited exceptions, employers are prohibited from collecting genetic information from applicants or employees. If an employer obtains an individual’s genetic information, the employer must maintain that information in a separate medical file, treat the information as confidential, and disclose it only under limited circumstances. If applicable, genetic information may be maintained in the same

manner as confidential medical records under the Americans with Disabilities Act.

Employers are also prohibited from using genetic information for decisions impacting terms of employment, such as hiring, separation, or promotion decisions. Additionally, GINA prohibits employers from retaliating against any individual who supports and enforces the provisions of the statute or opposes a policy or procedure that violates the statute.

GINA Enforcement

The employment provisions of GINA will be enforced by the Equal Employment Opportunity Commission (the “EEOC”). Although the EEOC issued proposed regulations to implement GINA’s employment title in early 2009, final approval of those regulations is still pending. Employers should be aware that the final regulations will impact the interpretation and application of GINA.

What Employers Should Do

In anticipation of the publication of the EEOC’s final regulations, employers should take steps to prepare for GINA’s impact. Employers should review how and when medical information is collected to ensure they are not requesting data that could be considered genetic information. Additionally, Employers should contact their health insurance providers to ensure that the providers’ forms do not solicit genetic information. Employee manuals, internal documents and policies and procedures should be updated to reflect that genetic discrimination is prohibited and to include other pertinent information about GINA. The EEOC recently issued a revised version of its standard anti-discrimination poster that covered employers must display, available at <http://www1.eeoc.gov/employers/poster.cfm>. Finally, employers should ensure that human resources personnel and other supervisors are properly trained on GINA’s requirements.

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