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"GINA" Adds Discrimination Category

The Genetic Information Nondiscrimination Act of 2008 ("GINA") protects employees against the improper use of genetic information. Enacted on May 21, 2008, portions of the law applicable to insurers became effective for plan years beginning on or after May 21, 2009. The employment-related portions of the law became effective November 21, 2009.

The U.S. Department of Labor, Department of Health and Human Services and Internal Revenue Service issued interim final GINA regulations on October 7, 2009, effective December 7, 2009.

GINA covers employers with 15 or more employees. Generally, it prohibits employers from refusing to hire, discharging or otherwise discriminating against applicants and employees based upon genetic tests or genetic information. Insurers are prohibited from using genetic information for pricing or coverage decisions.

(GINA continued on page 3)



(GINA continued from page 1)

Genetic information is defined as information related to: (1) an individual's own genetic tests; (2) the genetic tests of family members; and (3) the manifestation of a disease or disorder in family members (family medical history).

For purposes of the law, "family members" are dependents or any other individual who is a first, second, third or fourth degree relative of the individual or the individual's dependent. The interim final regulations treat relatives by marriage or adoption the same as biological relatives, and individuals who are not full-blood relatives (such as half-siblings) the same as full-blood relatives.

GINA also prohibits employers from requesting or collecting genetic information from employees or their family members. However, there are a number of important exceptions, including:

- where the acquisition of genetic information is inadvertent (e.g., "water cooler" talk)
- where health or genetic services are offered by an employer through "wellness" programs
- where genetic information and family medical history are "commercially and publicly available" (e.g., obituaries), and

- where such information is requested in connection with an employee's application for family or medical leave pursuant to the Family and Medical Leave Act (FMLA)

Any genetic information an employer possesses must be treated as confidential in the same manner as medical information under the Americans with Disabilities Act.

Generally, GINA incorporates the enforcement procedures of Title VII of the Civil Rights Act of 1964. An individual with a complaint of discrimination prohibited by GINA must file a charge with the Equal Employment Opportunity Commission before filing a private lawsuit.

A covered employer should:

- assure that it does not request genetic information, and appropriately protect any such information received through one of the approved exceptions
- add genetic information to its nondiscrimination policy as another basis on which the employer will not discriminate, and
- post the EEOC's newest poster, updated in November 2009 to include a summary of GINA's requirements

(Cheryl F. Wolff, Esq., Spengler Nathanson P.L.L.; 11/09)

Need help getting your hands on the new required GINA poster?

Let the EA help!

*We can provide you with the FREE links to the posters,
OR you can purchase your all-inclusive posters from us for only \$25!*

Contact Judi Roe at 419-885-8505 for more information and to order!

BWC Changes

December 2, 2009

9am-11:30am

Terri Case, an expert in the Ohio Workers' Compensation system, will be speaking on the major changes to Ohio Workers' Comp and the impact these changes will have on employers.

The cost for this session is \$49 for members and \$79 for non-members. If you would like more information or to sign up for this session please contact Judi Roe at 419-885-8505 ext. 202 or jroe@employersassociation.com



5800 Monroe St., Bldg. F Sylvania, OH 43560 | 419-885-8505