

Employment Alert

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EEOC Releases Updated Employment Poster Incorporating GINA

On Wednesday, one month before the employment provisions of the Genetic Information Nondiscrimination Act of 2008 (GINA) take effect, the EEOC finally released an updated poster describing the act's applicable provisions. Covered entities must display the poster by the act's effective date of **November 21, 2009**, and the poster is available on the EEOC's website at www.eeoc.gov/posterform.html.

GINA was enacted to protect job applicants, current and former employees, labor union members, apprentices and trainees from being discriminated against by employers based on their genetic information, such as having a predisposition to developing a genetic disease or disorder. Specifically, GINA prohibits the use of genetic information in making decisions related to any terms, conditions, or privileges of employment, prohibits covered entities from intentionally acquiring genetic information, and requires confidentiality with respect to genetic information. GINA also prohibits retaliation by employers against employees who complain about their employer's use of genetic information. GINA's coverage corresponds with that of Title VII of the Civil Rights Act of 1964, as amended, covering employers with 15 or more employees, employment agencies, labor unions, and joint labor management training programs, as well as federal sector employers.

The EEOC has expressly stated that the prohibition on the **use** of genetic information is absolute. However, there are limited exceptions to the act's general rule against the **acquisition** of genetic information by employers. Some of the exceptions include instances where a supervisor overhears a conversation between co-workers in which genetic information is discussed or if an employer receives genetic information in response to a question about the general health of an employee or employee's family member. Another exception would occur where an employer receives genetic information as part of documentation an employee submits in support of a request for reasonable accommodation under the Americans with Disabilities Act or other similar law.

The EEOC has warned that employers in possession of genetic information about applicants or employees must treat it the same way they treat medical information generally. In other words, they must keep the information confidential and, if the information is in writing, must keep it apart from other personnel information in separate medical files. A covered entity may keep genetic information in the same file as medical information subject to the ADA.

Please ensure you are in compliance with GINA's posting requirements prior to the act's November 21st effective date. If you have any questions about GINA, please contact Paul Garry or any other MBT labor and employment lawyer at (312) 474-7900.

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