

# **EEOC Issues Final Rules on Genetic Information Nondiscrimination Act (GINA) – What GINA Means to Employers**

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The United States Equal Employment Opportunity Commission (EEOC) has released [final regulations](#) on the employment provisions of the Genetic Information Nondiscrimination Act (GINA), which prohibits employers from discriminating on the basis of genetic information and from requiring or requesting genetic information from employees or family members. GINA also requires employers to keep employees' genetic information confidential.

The final regulations include important changes and additions from the interim regulations adopted last year, including these exclusions:

## Employer safe harbor for advance notice

If an employer inadvertently receives genetic information as the result of a legitimate request for medical information – for example, if the employer asks for medical documentation of a disability – the employer will not be considered in violation of the law if they have told the employee or health care provider not to provide genetic information. The EEOC provides sample language for employers to use.

## Online searches

If an employer inadvertently acquires genetic information on an employee as the result of a general Internet search and the information is publicly and commercially available, they have not broken the law. However, if an employer conducts an online search with the intent to discover genetic information, this is a violation of the law.

## Employer-provided wellness programs

An exception applies to employers who offer wellness programs on a voluntary basis as long as employees who participate are informed that any genetic information they disclose is provided voluntarily. Certain requirements must be met to avoid a violation of GINA.

## Personnel files

Even though the final regulations state that any employee genetic information that was added to personnel files prior to the GINA effective date of Nov. 21, 2009, does not have to be removed,

employers are prohibited from using or disclosing genetic information from personnel files regardless of when it was added to the file. To comply with this provision, we recommend that employers review all personnel files for genetic information, remove and segregate it into separate confidential medical files(which you should already have to be in compliance with the ADA and applicable State law).

Employers should review and update their policies and forms, such as the FMLA medical certification. Violation of GINA could expose an employer to a civil lawsuit where an employee can seek damages and attorney fees.

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### About Beth Lincow Cole

Employment Law Attorney Beth Lincow Cole has skillfully helped business owners and managers head off the unwanted and unnecessary lawsuits that can arise in the workplace. Drawing on her successful legal experiences both in and outside the courtroom, Beth Lincow Cole understands how to protect employers. By developing solid pre- and post-employment procedures for her clients, she assures that they are legally protected.

Beth Lincow Cole has worked for large regional and national law firms, focusing solely on employment issues, on behalf of management within a wide range of industries. Whether you are a start up company with basic questions about personnel files or a larger company with questions about an employee's Family Medical Leave, Beth Lincow Cole can help. Drawing on her experiences, she counsel's companies in the following practice areas:

- Defense in administrative agency matters such as before the DOL, EEOC, PHRC or NJDCR
- Department of Labor Audits
- Discrimination
- Downsizing/Reduction in Force
- Drug Testing
- Employment Contracts and Severance Agreements
- Employment Law Compliance
- FMLA and other family leave laws
- Independent Contractors/Contingent Workforce

To learn more about Beth Lincow Cole and the services her firm provides visit us at <http://www.blclegal.com/>