

Complying With the New GINA Regulations

Sedgwick's Employment Law Update

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On November 9, 2010 the Equal Employment Opportunity Commission (EEOC) issued the final regulations for enforcing Title II of the Genetic Information Nondiscrimination Act (GINA), originally signed into law on May 21, 2008 by President George W. Bush. To comply with GINA, we recommend employers do the following:

- Update all non-discriminatory policies to reflect that discrimination on the basis of genetic information is prohibited.
- Post the EEOC's new equal employment opportunity poster referring to GINA.
- Treat any genetic information, which includes family medical history, that is obtained as confidential medical information and do not include it in personnel files.
- When providing Family and Medical Leave Act forms for the employee's own medical condition or Americans with Disability Act forms, include the safe harbor language specified in the statute, which says:

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

- If you have an employee undergo a fitness for duty examination with a company-paid medical professional, require that the medical professional does not provide you with any genetic information.
- Train supervisors and managers to avoid inquiring about an employee's family medical history, either inadvertently or purposefully. (Note: Questions regarding the general well-being of the employee or the employee's relatives will not be a violation; however, follow-up questions that are "probing in nature" will be a violation of GINA.)
- Review your wellness program to ensure that it meets the requirements of GINA, including 1) being voluntary; 2) receiving written authorization from the employee after explaining what information will be obtained and the purpose for which it will be used; 3) requiring that only licensed health care professionals receive the information and no managers or supervisors have access; and 4) clearly notifying employees that they need not provide genetic information to receive any reward for participation in the wellness program.

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