

Settling Its First Genetic Information Nondiscrimination Act (GINA) Lawsuit, EEOC Acts on Priority

The Equal Employment Opportunity Commission (EEOC) announced last week that it had settled its first lawsuit alleging violations of the Genetic Information Nondiscrimination Act (GINA). GINA, which was passed by Congress in 2008, makes it illegal for employers with 15 or more employees to discriminate against employees or applicants on the basis of genetic information. More specifically, GINA makes it unlawful for employers to inquire about (1) an individual's genetic tests; (2) the genetic tests of an individual's family members; and (3) the manifestation of a disease or disorder in the family members of such an individual. The law allows for some exceptions, including where an employee's family medical history is required in order for the employer to comply with the certification provisions of the Family and Medical Leave Act; and where the employer offers health or genetic services as part of a wellness program, so long as no individually identifiable information is provided directly to the employer.

In this suit, the EEOC had charged Oklahoma-based employer Fabricut, Inc. with violating GINA by asking an applicant about her family medical history – including the existence of heart disease, cancer, diabetes, arthritis, and mental illness – as part of a mandatory post-offer medical exam. The EEOC also charged Fabricut with violations of the Americans with Disabilities Act when it refused to hire the applicant based on its assessment that she had carpal tunnel syndrome. Per the terms of a consent decree, which the EEOC filed simultaneously with its lawsuit, Fabricut agreed to pay \$50,000 and to take actions to prevent future discrimination. See *Equal Employment Opportunity Commission v. Fabricut Inc.*, Case No. 13-Civ. 248 (CVE)(PJC) (N.D. Okla. May 7, 2013).

At the end of 2012, the EEOC declared that genetic discrimination would be one of its top priorities over the next four years. Employers should confirm that none of their policies run afoul of GINA, and should make sure that they are not requesting family medical history or other genetic information from employees – whether directly or through a required medical exam. Employers should also update their employee handbooks to reflect that they do not discriminate on the basis of genetic information.

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Lisa E. Cleary

212-336-2159

lecleary@pbwt.com

Catherine A. Williams

212-336-2207

cawilliams@pbwt.com

YiLing Chen-Josephson

212-336-2532

ychenjosephson@pbwt.com

Adam Pinto

212-336-2156

apinto@pbwt.com

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