

Employment Law Compliance, Inc.  
Suite 635

115 Perimeter Center Place  
Atlanta, Georgia 30346

Telephone: 866-801-6302 Toll Free  
Facsimile: 770-206-3381

[bankers@employlawcompliance.com](mailto:bankers@employlawcompliance.com)  
[www.employlawcompliance.com](http://www.employlawcompliance.com)

## **GENETIC INFORMATION NONDISCRIMINATION ACT SIGNED INTO LAW**

On May 21, President Bush signed into law the Genetic Information Nondiscrimination Act (GINA). The new law prohibits discrimination against individuals on the basis of their genetic information in both employment and health care. The employment provisions of GINA become effective in 18 months (November 2009), and the provisions pertaining to group health plans become effective in a year (May 2009). In the next twelve months, the Equal Employment Opportunity Commission (EEOC) will issue regulations detailing how the law applies to employers.

GINA prohibits an employer from discriminating in hiring, firing, compensation, terms, or privileges of employment on the basis of genetic information of an individual or of an individual's family member. A family member is the spouse of the individual, the individual's dependent child, including a child who is born to or placed for adoption, or a parent, grandparent, or great-grandparent.

GINA forbids an employer requesting or obtaining genetic information except: (a) where the employer inadvertently acquires the information; (b) for genetic services offered by the employer, for example, in wellness programs; (c) for purposes of complying with the Family and Medical Leave Act; and (d) where the employer purchases documents that are commercially available.

GINA also prohibits health care plans from denying eligibility to enroll for health care coverage or from adjusting premium or contribution rates based on an individual or family member's genetic information. However, GINA does allow a health care professional to advise a patient to undergo a genetic test, or about the provision of genetic services through a wellness program.

As under Title VII or the Americans with Disabilities Act, individuals asserting employment discrimination based on their genetic information must file an EEOC charge before proceeding to court. A prevailing plaintiff may recover the damages set out in the Civil Rights Act of 1991, which provides for jury trials, and compensatory and punitive damages capped at \$300,000 or lower, depending on the size of the defendant employer. Plaintiffs also may recover equitable relief, which includes back pay and front pay. Unlike Title VII, GINA specifically states that "disparate impact" claims are not recognized in genetic bias cases.

### **PRACTICE POINTERS**

While GINA does not go into full effect for 18 months, it is not too soon to be looking at your EEO policy, and revising it to include "genetic information" in the list of protected categories. Also, remember that genetic information is a type of "Personal Health Information" to be treated confidentially under HIPAA's privacy rule. Incorporating the general provisions of GINA into management EEO training immediately is a good idea, while we wait for final regulations to fine-tune all policy communications and employee training on this topic.