



## Labor & Employment Law Update

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### **Genetic Information Discrimination**

In May 2008, the federal Genetic Information Nondiscrimination Act (“GINA”) was signed into law. Title I of the Act prohibits genetic discrimination in the area of health insurance while Title II prohibits discrimination in the area of employment.

Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information.

GINA’s employment provisions became effective on November 21, 2009.

The California Fair Employment and Housing Act (“FEHA”) already prohibits California employers from discriminating against applicants or employees on the basis of genetic information. (Gov. Code, Secs. 12926, 12940.) However, GINA provides more detail regarding prohibited discrimination.

The U.S. Equal Employment Opportunity Commission (“EEOC”) enforces Title II of GINA.

#### **Discrimination Forbidden**

Genetic information includes information about an individual’s genetic tests and genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family member, for example, an individual’s family medical history.

GINA forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment.

### Acquiring Genetic Information Prohibited

In general, other than for a few very narrow exceptions, it is unlawful for an employer to obtain genetic information. One of the exceptions does provide that genetic information may be acquired as part of the certification process for leave pursuant to the Family Medical Leave Act (or leave under similar state law), where an employee is asking for leave to care for a family member with a serious health condition.

### Confidentiality of Genetic Information

Under GINA, it is also unlawful for an employer to disclose genetic information about applicants or employees. Employers in possession of genetic information about applicants or employees must treat it the same way they treat medical information generally. 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. An employer may keep genetic information in the same file as other medical information in compliance with the Americans With Disabilities Act.

### Revised “EEOC is the Law” Poster

EEOC has revised the “EEOC is the Law” poster to add information about GINA and other changes in federal employment and discrimination law. The revised poster may be ordered or printed from the EEOC website “[eeoc.gov/employers/poster](http://eeoc.gov/employers/poster).” The notice must be posted in prominent and accessible places where notices to employees and applicants are customarily maintained.

### Regulations Pending

GINA requires EEOC to issue regulations implementing Title II of the Act. EEOC published a Notice of Proposed Rulemaking on March 2, 2009. The public comment period ended on May 1, 2009. However, the final regulations have not yet been issued by EEOC.

If you have any questions regarding the Genetic Information Nondiscrimination Act, please contact this office.

— Carol J. Grogan, Counsel

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