

Equal Employment Opportunity Commission Issues Genetic Information Non-Discrimination Act Final Regulations

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The U.S. Equal Employment Opportunity Commission (EEOC) recently issued final regulations implementing the employment provisions (Title II) of the Genetic Information Non-Discrimination Act of 2008 (GINA). GINA prohibits use of genetic information to make decisions about health insurance and employment, and restricts the acquisition and disclosure of genetic information. Title II of GINA represents the first legislative expansion of the EEOC's jurisdiction since the Americans with Disabilities Act of 1990. The regulations were approved by a unanimous vote of the Commission, and include clarifications and refinements made in response to comments received during the notice and comment period. Congress enacted GINA with strong bipartisan support in 2008, in response to concerns that patients would decline to take advantage of the increasing availability of genetic testing out of concern that they could lose their jobs or health insurance if such tests revealed adverse information. Title II of GINA prohibits employment discrimination based on genetic information, and restricts the acquisition and disclosure of genetic information. Genetic information includes information about individuals' genetic tests and the tests of their family members; family medical history; requests for and receipt of genetic services by an individual or a family member; and genetic information about a fetus carried by an individual or family member or of an embryo legally held by the individual or family member using assisted reproductive technology. The final regulations provide examples of genetic tests; more fully explain GINA's prohibition against requesting, requiring, or purchasing genetic information; provide model language employers can use when requesting medical information from employees to avoid acquiring genetic information; and describe how GINA applies to genetic information obtained via electronic media, including websites and social networking sites. Legal remedies for violation of Title II of GINA include reinstatement, hiring, promotion, back pay, injunctive relief, monetary damages (including compensatory and punitive damages), and attorneys' fees and costs. Links to the regulations and to the questions-and-answers are on EEOC's website, at <http://eoc.gov/laws/types/genetic.cfm>. For additional employment information, please visit our web site at <http://www.joettedoran.com>.

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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