

Genetic Information Nondiscrimination Act

by Joette S. Doran, Esq.

On Nov. 21, 2009, Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008 took effect. Under GINA, it is illegal to discriminate against employees or applicants because of genetic information. 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. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. The law 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. An employer may never use genetic information to make an employment decision because genetic information doesn't tell the employer anything about someone's current ability to work. Under GINA, it is also illegal to harass or to retaliate against a person because of his or her genetic information. It will usually be unlawful for an employer to get genetic information, however, there are certain narrow exceptions to this prohibition. Inadvertent acquisi-



tions of genetic information do not violate GINA and genetic information acquired as part of the certification process for FMLA leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition, is allowed.

It is unlawful for an employer to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a separate medical file.

For additional employment information, please visit our Web site at—
www.joettedoran.com.

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

Ms. Doran is licensed in Illinois, admitted to all Illinois federal courts and the U.S. Supreme Court. She is a member of the Federal Trial Bar and is the past chairperson of the Employment Law Committee for the Northwest Suburban Bar Association, a past president of Barrington Area Professional Women, and a member of the National Employment Lawyers Association.