Genetic Information Nondiscrimination Act (GINA)
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Statute effective November 21, 2009

Regulations effective January 10, 2011
Prohibits discrimination and harassment in employment on the basis of genetic information.

Restricts employers from requesting, requiring, or purchasing genetic information with certain exceptions.

Limits the disclosure of genetic information.
Genetic Information includes:

* Family medical history;
* Results of genetic tests of an employee or his/her family member;
* Employee or family member’s request for genetic services;
* Genetic information of a fetus carried by an employee or embryo legally held by employee.
“Family medical and genetic information” is included in the list of protected characteristics covered by the University’s Preventing and Addressing Discrimination and Harassment (PADH) policy.

GINA and its regulations aim to protect employees whose genetic information suggests they may be at an increased risk for developing a certain disease, illness, or condition in the future, but do not currently have that diagnosis.

An employee’s genetic information or family medical history must never serve as the basis for employment decisions – hiring, firing, promotion, demotion, compensation, transfer, etc. Nor should any employee be subject to a hostile work environment because of his/her family medical and genetic information.

Example: Employee, who is 49 years old, tells Supervisor that his father, older brother and grandfather all died from massive heart attacks at age 50. Supervisor fires Employee because he fears Employee will suddenly drop dead of a heart attack in the next year and wants more stability in his unit. The termination violates GINA. The Supervisor took an adverse employment action against the Employee solely because of the Employee’s family medical history.
GINA’s restrictions on obtaining employee genetic information are stringent.

An employer must not require, request, or purchase employee genetic information unless permitted by law.

An employer can violate GINA by inappropriately obtaining an employee’s genetic information, even if the employer did not specifically intend to obtain the genetic information.
An inappropriate “request” for genetic information could include:

- Conducting an internet search on an employee in such a way that is likely to uncover genetic information;

- Actively eavesdropping on an employee’s conversation;

- Asking about the health status of an employee or employee’s family member in such a way that is likely to result in obtaining genetic information.
Exceptions to the “require, request, or purchase” rule:

- “Inadvertent” requests or receipts of genetic information;
- Genetic information received from health or genetic services offered in employee wellness programs;
- Family medical information requested in response to employee request for Family Medical Leave Act (FMLA) leave;
- Purchase of publicly available documents;
- Genetic monitoring of the biological effects of toxic substances in the workplace;
- DNA analysis for law enforcement purposes.
“Inadvertent” exception is fuzzy:

Genetic information received in casual “water cooler” conversations will likely be deemed “inadvertent.” However, supervisors should avoid asking employees more probing questions.

**Example:** Supervisor asks Employee about her weekend. Employees states that it was rough because her mother was just diagnosed with breast cancer and had started chemotherapy. Such a conversation would not violate GINA because the Employee offered family medical history information in response to an innocuous inquiry about the weekend. However, to avoid possibly running afoul of GINA, the Supervisor should NOT probe further into the specific diagnosis or ask questions that might elicit more genetic information.

Receipt of an employee’s genetic information via social media platforms like Facebook will be deemed “inadvertent” **IF** (1) the supervisor did not intend to obtain genetic information about the employee and (2) the website is public OR the employee voluntarily granted the supervisor access to his/her account (“friended”).
Employer may violate GINA even if it accidently obtains employee genetic information through otherwise lawful requests for employee medical information.

Lawful requests include FMLA supporting documentation, Fitness For Duty (FFD) exams, disability accommodation requests, etc.

Employers must warn health care providers responding to these requests that they should not even COLLECT genetic information for purposes of completing the otherwise lawful request for medical information (this includes family medical history).

**Example:** In response to an employer request for medical information in support of a disability accommodation request, the physician not only details the employee’s impairment, how it interferes with his job functions, and an effective accommodation as requested, but she also sends a full copy of the employee’s medical record, which includes a detailed family medical history. Receipt of the family medical information will violate GINA unless the employer previously warned the physician not to send such information.
GINA Regulations recommend adding the following language to all employer medical information request forms:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information’ as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”
GINA regulations state that this language operates as a “safe harbor” for employers who then inadvertently receive an employee’s genetic information in response to a lawful request for medical information.

Employers who discover that health care providers are collecting genetic information in spite of these warnings must take action to stop the collection, up to and including severing ties with the provider.
Employers must not disclose an employee’s genetic information EXCEPT:

- To the employee, upon written request;
- To an occupational or health researcher if compliant with federal law;
- In response to a court order;
- To a government official investigating GINA compliance, if the information is relevant;
- To the extent necessary by FMLA or similar state laws (need to inform employee’s supervisor about FMLA request);
- As required by NHS or state organization regarding a life threatening contagious disease.
All employee genetic information obtained after November 21, 2009 must be treated like “medical information” and maintained in a confidential medical information file, separate from personnel files (similar to ADA requirements).

Need not remove genetic information obtained prior to November 21, 2009 from personnel files.

BUT if a personnel file must be disclosed to someone other than the employee to whom it belongs, any genetic information in the file must be removed before disclosure.
Thank you for taking today’s training!

Do not hesitate to contact EOP with questions: 924-3200