



## Legal Update

### New Restrictions on California Employers Will Take Effect: Genetic Information Nondiscrimination Act

November 4, 2009

On November 21, 2009 Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) will go into effect. GINA prohibits employers from using genetic information for decisions regarding hiring, firing, promoting, or determining terms of employment. GINA also prohibits an employer from retaliating against an employee who files a good faith claim of discrimination.

GINA is not retroactive and does not apply to employers with fewer than 15 employees. Genetic information already obtained or collected by an employer, however, may not be used in any prohibited manner after November 21<sup>st</sup>.

While GINA imposes new restrictions on California employers, California already prohibits employers from subjecting employees to genetic testing, except where based upon a *bona fide* occupational qualification, and requires confidentiality for genetic tests.

#### What is “genetic information?”

Genetic information generally includes genetic tests of an employee and his or her extended family members, the fetus of any pregnant person, or a legally held embryo; the manifestation of a disease or disorder in family members; and any request for or receipt of genetic services or participation in clinical research by an employee or family member.

#### What remedies are available to aggrieved employees?

Aggrieved persons have the same remedies available under GINA as they do under Title VII, including reinstatement, hiring, promotion, back pay, injunctive relief, pecuniary and non-pecuniary damages, punitive damages, and attorney fees and costs. The Title VII cap on combined compensatory and punitive damages (excluding past monetary losses) will limit recovery to \$50,000 - \$300,000, depending on the number of employees.

#### What is a business required to do by November 21<sup>st</sup>?

*If your business has 15 or more employees, you must:*

- Confidentially maintain all genetic information already collected by your company;
- Alert necessary employees that they are prohibited from using genetic information for decisions regarding hiring, firing, promoting, or determining terms of employment;
- Alert all employees that harassment based on genetic information is prohibited;
- Alert all employees that retaliation against a co-worker who files a good faith claim of discrimination is prohibited; and
- Post the EEO is the Law Poster Supplement in your workplace.

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*For additional information or answers to specific questions regarding your business, please contact:*

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