

GINA Protects Against Use of Genetic Information

Congress, with broad bipartisan support, passed the Genetic Information Nondiscrimination Act (GINA) in 2008 to keep insurers and employers from misuse of genetic information. The new law provides an expansion of the EEOC jurisdiction, the first in nearly 20 years.

Genetic testing is done for hundreds of diseases including some types of cancer, cystic fibrosis, and Alzheimer's. This law prevents employers and health insurers from requesting, requiring or purchasing genetic information about an employee, job applicant or employee's family member. Insurers are also prevented from buying this information for underwriting purposes.

GINA applies only to genetic information, while the ADA/ADAA still covers any discrimination relating to the symptoms or results of a condition, disease or disability.

The new law has six potential exceptions for the acquisition of the information, but examples of how far an employer may go in using the information need to be clarified. Those areas needing clarification are: voluntary wellness programs, requests for ADAA accommodation, requests for leave under the FMLA, a "water cooler" exception for voluntary revelations about genetic conditions, forensic lab or human remains identification uses, and genetic monitoring of toxic substances in the workplace with employee consent. Even if consent is acquired, the uses to which the information may be put are not fully clarified.

What This Means For Counties

Adopt or revise your privacy policy to restrict the use of genetic information. Make sure all management, supervisors, and employees know that even if the information is acquired legally or voluntarily, it may not be a defense to an ADAA claim or a claim of misuse under other health privacy laws.

For more information, contact CTSI at 303-861-0507.

Footnote/Endnote:

While medical tests by employers have declined according to the American Management Association, there are two earlier cases that suggest the EEOC will pursue claims based on misuse of genetic information. EEOC. V Burlington Northern and Santa Fe R.R. (E.D.Wisc.2001) resulted in blood test results being destroyed under a settlement agreement. Norman-Bloodsaw v. Lawrence Berkeley Laboratory (9th Cir. 1998) resulted in a finding that use of blood tests to screen for syphilis, pregnancy and sickle-cell anemia violated constitutional privacy and Fourth Amendment rights of the government employees.