



Is the New “EEO is the Law” Poster on Display at Your Office?

By Kathleen Henderson, King & Ballow Partner & Healthcare Practice Chair

khenderson@kingballow.com

The employment provisions in the Genetic Information Nondiscrimination Act of 2008 (GINA) went into effect over this weekend. This requires most providers to ensure either the new “EEO is the Law” poster or the supplement is prominently displayed at their office. Click on the link at the end of this post to print the supplement for immediate posting and to order the new poster.

GINA, 42 U.S.C. 2000ff *et seq.*, contains two sections: Title I, which relates to health coverage, and Title II, which prohibits employment discrimination based upon genetic information. Title II, which is the subject of this post, went into effect on November 21, 2009 and applies to employers who have 15 or more employees during 20 or more calendar weeks in the current or preceding year. GINA also applies to unions and employment agencies.

GINA prohibits covered employers from using genetic information for hiring, firing, promotion, and decisions regarding terms of employment. Additionally, GINA prohibits retaliation against an employee who files a complaint concerning genetic discrimination.

The term “genetic information” means information with respect to any individual about their genetic tests, genetic tests of their family members, and the manifestation of a disease or disorder in their family members. It does not include information about the individual’s age or sex.

Under GINA, employers are prohibited from requesting, acquiring and purchasing genetic information unless one of the following exceptions applies:

1. The genetic information is acquired inadvertently; or
2. The genetic information is offered by the employer as part of health or genetic services (including wellness programs) and:
 - a. the employee provides prior, knowing, voluntary and written authorization;
 - b. only the employee or family member receiving the services and the licensed health care professional or certified genetic counselor involved receive



individually identifiable information concerning the results of such services;
and

- c. the individually identifiable information is used only for the services provided and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

or

3. The employer requests or requires information pursuant to the certification provisions of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under state family and medical leave laws; or

4. The employer purchases documents that are commercially and publicly available (excluding medical databases or court records) that include family medical history; or

5. The genetic information is acquired pursuant to monitoring of biological effects of toxic substances in the workplace and:

- a. The employer provides written notice of the genetic monitoring to the employee;
- b. The employee provides prior, knowing, voluntary and written authorization, or the genetic monitoring is required by federal or state law;
- c. The employee is informed of individual monitoring results;
- d. The monitoring is in compliance with federal genetic monitoring regulations or state genetic monitoring regulations, in the case of a state implementing the genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*); and
- e. The employer, excluding any licensed health care professional or certified genetic counselor that is involved in the genetic monitoring program, receives the results only in aggregate terms that do not disclose the identity of specific employees;

or

6. The employer conducts DNA analysis for law enforcement purposes and such information is used for analysis of DNA identification markers for quality control.



Covered employers must also comply with GINA's restrictions concerning disclosure of genetic information and must keep genetic information confidential and separate from employee personnel files.

The Office for Civil Rights, U.S. Department of Health and Human Services has promulgated proposed rules concerning GINA for notice and comment. Entities desiring to submit comments for consideration must do so prior to December 7, 2009. Please see the link below for the proposed rules and for more information.

Click here for "EEO is the Law" Posters and Supplements in English, Spanish, & Arabic:
<http://www1.eeoc.gov/employers/poster.cfm>

References:

Genetic Information Nondiscrimination Act of 2008, 122 STAT. 881 (May 21, 2008)
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ233.110.pdf

Proposed Rules
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/genetic/ginanprm.pdf>

For more information contact: Kathleen Henderson, Partner & Health Care Practice Chair at King & Ballow, khenderson@kingballow.com, phone (615) 726-5489.

For more posts of interest to health care professionals go to:
www.kingballow.com/healthcare.php

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