



## Protection from Genetic Information Discrimination

### Meet “GINA”

by *Evan D Chinn*

Scientists continue to identify genes that are associated with a variety of diseases including types of cancer, diabetes, heart disease, Alzheimer's and Parkinson's disease. Screening, detection and treatment of inherited diseases continue to improve and become more commonplace in the United States. With such advances, fears about discrimination based on genetic information have arisen. However, the federal government took steps to prohibit genetic discrimination through the recent passage of the Genetic Information Non-Discrimination Act of 2008 ("GINA"). GINA protects persons who learn through genetic testing that they may be susceptible to inherited conditions from adverse employment actions and discrimination by health insurers. Health care advocates hope these new protections will allow people to seek out genetic testing and treatment without fear of discrimination. GINA amends several federal statutes and goes into effect in November 2009. Regulations interpreting the law must be promulgated by May 2009.

### GINA's Non-Discrimination Provisions

**Employment.** GINA prohibits employers (including employment agencies and labor unions) from discharging, refusing to hire, or otherwise discriminating against individuals and family members based on genetic information. Specifically, GINA:

- Prohibits discrimination based on genetic information in hiring, compensation, terms, conditions or privileges of employment
- Prohibits the collection of genetic information, except in very limited circumstances
- Prohibits retaliation against any individual "who has opposed any act or practice made unlawful" by the Act's employment title, or who participates in an investigation, proceeding, or hearing under the Act
- Requires employers to maintain genetic information in a separate file and treat it as a confidential medical record, to be disclosed only in limited circumstances
- Maintains the protection of other federal or state laws that provide equal or greater protection against genetic bias, including HIPAA, the ADA and the Rehabilitation Act

**Health Insurance.** GINA also prohibits discrimination by group health plans and health issuers against individuals and family members based on genetic information. Among other provisions, GINA prohibits enrollment restriction and premium adjustment based on genetic information. GINA also prohibits health plans and insurers from requesting or requiring that an individual take a genetic test. The law allows a health plan to request voluntary genetic testing only for research purposes and only if the testing has no effect on enrollment status, premium, or contribution amounts.

## **Washington State Law**

In addition to HIPAA and GINA, state law ([RCW 49.44.180](#)) currently prohibits any employer from requiring that an employee or prospective employee submit genetic information, or submit to genetic testing as a condition of employment or continued employment.

### **What This Means for Employers**

Fortunately, few employers have instituted genetic screening tests. However, GINA is a good reminder that use of "employment" tests and other selection procedures can violate federal anti-discrimination laws if they disproportionately exclude people of a particular protected status, unless the employer can justify the business necessity of the test or procedure under the law. Employers should ensure that they do not conduct cognitive tests, personality tests, medical examinations, credit checks, or criminal background checks that might negatively impact employees or prospective employees based on protected status.

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