

Tuesday, November 24, 2009

Labor and Employment Update: Genetic Information Nondiscrimination Act of 2008

By Jessica L. Catlett

The Genetic Information Nondiscrimination Act of 2008 ("GINA") became effective on November 21, 2009. In general, GINA forbids discrimination in employment on the basis of an individual's genetic information. Now that the effective date of GINA has passed, employers should review their policies and postings to make sure they are consistent with this new law.

Among other things, GINA makes it unlawful for employers to fail or refuse to hire, discharge, or otherwise discriminate against an employee on the basis of genetic information of the employee or the employee's family members. GINA further prohibits retaliation against employees who oppose or participate in the investigation of alleged acts that violate GINA.

GINA also makes it unlawful for employers to request, require or purchase genetic information of an employee or of an employee's family members, except in limited circumstances. These circumstances include: (1) compliance with family and medical leave laws; (2) genetic monitoring of the effects of toxic substances in the workforce, when such monitoring is otherwise required by law; (3) where genetic services are offered by the employer, such as those available as part of a wellness program, and the employer does not receive any individually identifiable genetic information; or (4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books) that include family medical history.

When employers do possess genetic information, GINA requires that they apply the same confidentiality protections for genetic information as are applicable to other types of medical information protected under the Americans with Disabilities Act, including maintaining such information in separate forms in separate medical files, and that they not disclose such information except: (1) when necessary for the employee to comply with federal or state medical leave laws, (2) to government agencies investigating compliance with GINA, and (3) in response to a court order, provided that the employer notifies the employee of the disclosure if the court order was issued without the employee's knowledge.

Genetic information is information that relates to genetic tests taken by the employee or the employee's family members and any request or receipt of genetic services, including genetic counseling, genetic education or participation in genetic research. Genetic information also includes information relating to the manifestation of a disease or disorder in the employee's family members. Genetic information does not include information relating to the age or sex of an individual.

The prohibition against discrimination based on genetic information is not new in the majority of states, including Arizona and Nevada. See A.R.S. § 41-1463(B)(3) (prohibiting employers from failing or refusing to hire, discharging, or otherwise discriminating against any individual based on the results of a genetic test received by the employer); N.R.S. § 613.345 (prohibiting employers, labor organizations, and

quick links

- [Labor and Employment Practice](#)
- [Unsubscribe](#)
- [Acrobat Reader](#)

Phoenix
3003 N. Central Ave.
Suite 2600
Phoenix, AZ 85012
(602) 916-5000

Tucson
One S. Church Ave.
Suite 1000
Tucson, AZ 85701
(520) 879-6800

Nogales
420 W. Mariposa Rd.
Suite 200
Nogales, AZ 85621
(520) 281-3480

Las Vegas
300 S. Fourth St.
Suite 1400
Las Vegas, NV 89101
(702) 692-8000

Denver
1700 Lincoln
Suite 2900
Denver, CO 80203
(303) 291-3200

employment agencies from asking prospective or current employees to submit to genetic testing; from requiring genetic testing as a condition of employment; and from altering the terms, conditions or privileges of employment based on genetic information). Colorado does not have a separate state law governing discrimination in employment on the basis of genetic information.

The EEOC is expected to publish final regulations in the near future. We will keep you posted on any new developments. If you have any questions please feel free to contact Jessica L. Catlett at (602) 916-5402 or any of our Labor and Employment attorneys.

Jessica L. Catlett practices in the area of labor and employment law. She earned her B.S. (2002) from Arizona State University and her J.D. (2006) from the University of Arizona.



Jessica L. Catlett
Associate
602.916.5402
jcatlett@fclaw.com