

Labor and Employment E-news

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New Protections for Genetic Information

On May 21, 2008, President Bush signed into law the Genetic Information Nondiscrimination Act ("GINA"), a law designed, in part, to prohibit employers from discriminating against employees and applicants for employment on the basis of their genetic information. Part of the reason for the enactment of GINA was to enable individuals to take advantage of genetic testing, technologies, research, and new therapies without it affecting their ability to get and maintain employment.

GINA defines "genetic information" as information about an individual's genetic tests, information about the genetic tests of an individual's family member, or the manifestation of a disease or disorder in an individual's family member. "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detects genotypes, mutations or chromosomal abnormalities. Title II of GINA focuses on employment practices and borrows the Title VII definitions of "employer" and "employee," which means that if an employer is covered by Title VII, it is also covered by GINA.

Under GINA, employers are prohibited from discriminating against employees and applicants on the basis of genetic information. The statute provides that employers may not adversely affect an employee's or applicant's terms or conditions of employment based on that individual's genetic information and may not segregate or classify an employee or applicant in a way that would deprive that individual of an employment opportunity or adversely affect that individual's employment status on the basis of genetic information.

The statute also requires that employers treat genetic information as confidential medical information. Furthermore, employers may not request, require or purchase genetic information about an applicant, employee or an employee's family member. There are several exceptions to this prohibition, however. Most notably, an employer does not violate GINA's prohibition against acquiring genetic information where: (1) the employer inadvertently requests the genetic information; (2) the employer offers health or genetic services, including as part of an employee wellness program; (3) the employee provides knowing and voluntary written authorization; or (4) the request is made under section 103 of the Family and Medical Leave Act.

GINA will take effect on November 21, 2009. In the meantime, employers can review and update their non-discrimination and medical information policies to include "genetic information." For further information on GINA or to get help in reviewing your HR policies, please contact the author of this E-News Bulletin or your Butzel Long Attorney.

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