



## Congress Prohibits Discrimination Based on Genetic Information

Employment, Labor & Benefits Practice Group

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On May 21, 2008 President Bush signed the Genetic Information Nondiscrimination Act (GINA), a law that prohibits discrimination by employers or insurers based on an individual's genetic information.

GINA prohibits employers, employment agencies, and labor unions, from discharging, refusing to hire, or otherwise discriminating against employees on the basis of genetic information.

GINA aims to eliminate any fear of discrimination held by those who now decline to undergo potentially beneficial genetic tests. GINA also amends the Employee Retirement Income Security Act (ERISA) and the Public Service Health Act to preclude discrimination by group health plans and health insurance issuers against individuals based on genetic information and to prohibit insurers from requiring genetic tests.

Regarding employment discrimination, GINA:

- Prohibits discrimination on the basis of genetic information in hiring, compensation, and other personnel processes;
- Prohibits the collection of genetic information by employers and allows workplace genetic testing only in limited circumstances, such as monitoring the adverse effects of hazardous workplace exposures, complying with the family and medical leave laws, or conducting DNA analysis for law enforcement purposes; and
- Requires genetic information possessed by employers to be confidentially maintained and disclosed only to the employee or under limited circumstances.

Regarding health insurance discrimination, GINA:

- Prohibits enrollment restrictions and premium adjustments on the basis of genetic information or genetic services;
- Prevents health plans and insurers from requesting or requiring that an individual or the individual's family member take a genetic test; and

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- Covers all health insurance programs, including those under ERISA, state-regulated plans, and the individual market.

Additionally, GINA includes child labor language that would increase penalties for employer violations of the Fair Labor Standards Act. GINA increases the penalty for child labor violations to \$11,000 per violation, allows the Labor Department to assess penalties of up to \$50,000 when a violation results in death or serious injury of a child, and assesses a possible \$100,000 for repeat violations. GINA would also increase the civil penalty for any repeated or willful violation of minimum wage or maximum hours requirements to \$1,100.

The employment provisions of GINA become effective in November 2009, or 18 months after the President signed the Act, and the provisions pertaining to group health plans become effective in May 2009, or one year after the date of enactment. GINA also requires the EEOC to issue final regulations within a year of enactment.