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Polly H. Wright, Senior Consultant
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On May 21, 2008 President Bush signed into law the Genetic Information Nondiscrimination Act (GINA). This new law prohibits discrimination against individuals on the basis of their genetic information in both employment and health care. The employment provisions of GINA become effective in November 2009, or 18 months after the President signed the bill, and the provisions pertaining to group health plans become effective in May 2009, or one year after the date of enactment.

Employment Provisions

Nondiscrimination in Employment – GINA will prohibit an employer from discriminating against an individual in the hiring, firing, compensation, terms, or privileges of employment on the basis of genetic information of the individual or family member of the individual. For purposes of GINA, the term “family member” includes 1) spouse of the individual; 2) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or 3) parent, grandparent, or great-grandparent.

Restrictions on Collecting Genetic Information – GINA prohibits an employer from requesting, requiring, or purchasing genetic information of the individual or family member except (1) where the employer inadvertently requests or requires the information; (2) for genetic services offered by the employer (including wellness programs); (3) for purposes of complying with the Family and Medical Leave Act; and (4) where the employer purchases documents that are commercially available.

Exception for Genetic Monitoring in the Workplace – GINA does allow for genetic monitoring of biological effects of toxic substances in the workplace, but only if (1) the employer provides written notice of the monitoring to the employee; (2) the employee agrees to the monitoring in writing or the monitoring is required by federal, state, or local law; (3) the employee is informed of the results of the test; (4) the monitoring conforms to any federal or state law, including rules promulgated by OSHA; and (5) the employer receives the results of the tests in aggregate terms.

Health Care Coverage Provisions

Prohibitions against using genetic information – GINA will prohibit an insured or self-insured health care plan, from denying eligibility to enroll for health care coverage or from adjusting premium or contribution rates under a plan based on an individual or family member's genetic information. Health care plans are also prevented from requiring a plan participant to undergo a genetic test to be eligible for coverage under a health care plan.

Remedies for Violations of the Health Care Coverage Provisions – GINA will allow plan participants to receive injunctive relief under the Employee Retirement Income Security Act (ERISA) and have health care coverage reinstated back to the date of loss of coverage. *Plan administrators could be personally liable* for discriminating in coverage decisions and be assessed a penalty of \$100 per day for the period of noncompliance. Plans could be fined a minimum penalty of \$2,500 to \$15,000 for more than de minimis violations up to a total of \$500,000 for multiple violations.

Confidentiality of Genetic Health Care Information

GINA requires that the disclosure of protected genetic health care information would be governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The law would also provide participants with injunctive and equitable relief for violations of the confidentiality provisions of GINA. For violations of the privacy provisions of the law, civil monetary penalties of \$100 per day up to \$250,000 and 10 years in provision for egregious violations.

As more information becomes available, HR Consultants, Inc. will issue an update on this issue.