

FACT SHEET:

THE GENETIC INFORMATION NONDISCRIMINATION ACT

The Equal Employment Opportunity Commission has published final regulations implementing Title II of the Genetic Information Nondiscrimination Act (GINA). These new regulations are important for employers in understanding how and when they may collect genetic information (which includes family history) from employees, and how they may continue to offer financial incentives to employees for completing a Health Risk Assessment (HRA) that may include family history questions.

Last year, many Alliance members provided comments with concerns that the law could be interpreted as precluding employers from asking family history questions on HRAs, or from providing incentives to employees to complete them when they included family history questions.

The new and final GINA regulations clarify that employers may offer financial inducements for employees to complete a health risk assessment that includes questions about family medical history or other genetic information, as long as the following two criteria are met:

- » The assessment identifies the questions that request genetic information (including family history); and
- » The HRA tool makes clear, in language that is reasonably likely to be understood by those completing it, that those questions identified above are optional and the financial reward will be provided to employees regardless of whether they answer those questions.

The rule's preamble also says that employers may offer financial inducements for participation in disease management programs or other programs that encourage healthy lifestyles, such as programs that provide coaching to employees attempting to meet particular health goals. But to avoid a violation of Title II, employers who offer such programs and inducements to individuals based on voluntarily provided genetic information must also offer the programs and inducements to "individuals with current health conditions and/or to individuals whose lifestyle choices put them at risk of acquiring a condition."

The new regulations also provide model "safe harbor" language that employers may use to when lawfully collecting medical information, as follows:

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

If you have questions about GINA, please contact your attorney.

Resources:

Final regulations implementing Title II of the [Genetic Information Nondiscrimination Act \(GINA\)](#).

Series of Questions and Answers Regarding New Regulations from the [Equal Employment Opportunity Commission](#).

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