

EMPLOYMENT LAW

A L E R T

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Nondiscrimination Law Passed Regarding Genetic Information

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Although genetic research and information shows promise to improve health, there is concern regarding the use of genetic information, especially in the context of insurance and employment. In response, the Genetic Information Nondiscrimination Act (GINA) was drafted, and after 13 years of debate in Congress, President George Bush signed GINA into law on May 21, 2008.

GINA makes it illegal for insurance companies and employers to make decisions based upon an individual's genetic information. The law broadly defines "genetic information" to not only include tests of an individual's DNA's variations, but also to include genetic tests of an individual's family members and the manifestation of a disease or disorder in a family member. GINA's purpose is to create a national and uniform standard for insurers and employers and to fully protect individuals from potential discrimination based on genetic information. In theory, the law will allow individuals to freely take advantage of genetic testing, technologies, research and therapies without fear of reprisal.

Title I of GINA makes it illegal for insurers, including employer-sponsored plans, to base eligibility or premiums on an individual's genetic information. In addition, GINA also prohibits insurers from requesting an individual or an individual's family member to take a genetic test. Title I of GINA will take effect one year from May 21, 2009.

Title II of GINA prohibits private employers, employment agencies and labor organizations from discriminating based on an individual's genetic information in connection with hiring, firing, placement and promotion decisions. GINA also prohibits retaliation against an individual for opposing a practice made unlawful by GINA. Finally, GINA prohibits employers from collecting genetic information from their employees, except in certain circumstances. Examples of those exceptions include situations: (1) where such information is obtained inadvertently; (2) where the health or genetic service is offered by the employer, including services offered as part of a wellness plan; and (3) where an employer requests medical information in order to comply with the Family and Medical Leave Act. The law provides confidentiality protection to an employee regarding his

or her genetic information. It should also be noted that there is no "disparate impact" claim under GINA.

GINA adopts the powers, procedures and remedies of Title VII. Therefore, before an employee may file suit, he or she must file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). The EEOC will investigate the charge and may bring suit on behalf of the employee if it finds a violation. If the EEOC does not file suit, then the employee may do so in federal court upon receipt of a right to sue letter. GINA grants individuals similar remedies as those provided in Title VII.

Title II of GINA will become effective November 21, 2009. Over the next year, the EEOC will issue regulations that further clarify GINA and how it will effect employers.

If you have questions about this Alert, please call one of our labor attorneys listed below.

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