

legislativeUPDATE

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Department of Labor FAQs on Genetic Nondiscrimination (GINA)

The Genetic Information Nondiscrimination Act (GINA) is intended to prevent discrimination on the basis of genetic information in health insurance and in employment. GINA's health insurance requirements became effective for group health plans in plan years beginning after May 21, 2009 (January 1, 2010 for calendar-year plans).

For GINA's purposes, "genetic information" means information about an individual's genetic tests, genetic tests of the individual's family members, the manifestation of a disease or disorder in family members of the individual or any request for or receipt of genetic services, or participation in clinical research that includes genetic services by the individual or a family member of the individual. The term genetic information includes, with respect to a pregnant woman (or a family member of a pregnant woman) genetic information about the fetus and with respect to an individual using assisted reproductive technology, genetic information about the embryo. But genetic information does not include information about the sex or age of any individual.

Health Insurance Requirements. GINA prohibits group health plans from adjusting group premium or contribution amounts on the basis of genetic information. Group health plans are also generally prohibited from (1) requesting or requiring an individual or an individual's family members to undergo a genetic test; (2) requesting, requiring or purchasing genetic information for underwriting purposes; or (3) requesting, requiring or purchasing genetic information of an individual prior to, or in connection with, the individual's enrollment in the plan.

To help group health plans comply with GINA, the Department of Labor has updated its website to include some frequently asked questions (FAQs). The FAQs are a helpful reminder that plans may not discriminate on the basis of genetic information. They include definitions and address how GINA applies to health risk assessments. The FAQs address wellness program incentives, given that GINA prohibits a group health plan from collecting "genetic information" (including family medical history) prior to or in connection with enrollment, or at any time for underwriting purposes.

Employment Nondiscrimination Requirements. GINA also prohibits employers from discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment (including employment decisions based on health benefits) because of genetic information about the employee. Employers are also prohibited from

requesting, requiring, or purchasing genetic information about an employee or an employee's family member unless one of several specified exceptions applies. If an employer has genetic information about an employee, the information must be maintained in a separate file and treated as a confidential record within the meaning of the Americans with Disabilities Act (ADA). Disclosure of genetic information is permitted only for limited circumstances (for example, in response to a court order or for purposes of FMLA certification).

Plan sponsors should confirm that no genetic information is requested or collected during a plan's enrollment period. If any questionnaires include open-ended health questions, the plan sponsor should add an explicit statement that no genetic information should be provided (including family medical history).

If you have questions, **please contact your Conner Strong account representative toll-free at 1-877-861-3220.**

This Legislative Update is provided for general informational purposes only and is not intended to be legal advice. Readers are urged to contact an attorney for legal advice or assistance.