

Genetic Information Discrimination: FAQs for Employers

Labor & Employment Law Update

By John Ochoa on April 20, 2023

Proactive employers are well-versed in safeguarding against workplace discrimination based on race, gender, religion, age, or disability. But, what about lesser known forms of prohibited workplace discrimination like genetic information discrimination?

The Federal Genetic Information Nondiscrimination Act (GINA) and its Illinois counterpart, Genetic Information Protection Act (GIPA), both prohibit employers from disclosing genetic information or basing any employment decision on an employee's genetic information. Both statutes contain private rights of action for violations. GIPA, however, contains a statutory damages provision that provides for penalties of \$2,500 for each negligent violation, and \$15,000 for each intentional or reckless violation.

With these severe consequences for non-compliance in mind, we answer some questions on these statutes below:

What is "genetic information"?

Both statutes broadly define "genetic information" to include genetic tests of an individual or their family member or manifestations of a disease or disorder in family members.

Can an employer disclose an employee's genetic information?

No. An employer may not disclose genetic information relating to an employee or an employee's relative. For example, an employer may not mention to an employee's coworkers that the employee's mother has been diagnosed with diabetes after learning about the illness through an employee's request for FMLA leave.

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Can an employer make employment decisions based on an employee's genetic information?

No. For example, an employer may not decide not to hire an employee after learning that her sister has cancer out of concern that the employee may also be diagnosed with cancer and then be absent from work and/or affect health insurance costs. An employee's genetic information does not impact how an employee can perform a job.

What is the difference between a disability and genetic information as it pertains to antidiscrimination laws?

Genetic information is broader than a disability because it can include medical conditions that the employee does not have but is more likely than the general population to have in the future. Genetic information also includes information about family member's health information.

Can employers ask for information about an applicant's genetic information during the hiring process?

Generally, no. Employers should ensure that they are not requesting or soliciting genetic information of the applicant or their family members at any time, including in the application process or as a part of offering health benefits. However, this is subject to a few narrow exceptions, including an employee's voluntary participation in a wellness program that meets limiting criteria, an employee's certification for FMLA leave, or a voluntary genetic monitoring program to track the biological effects of toxic substances in the workplace.

There may be circumstances where an employer inadvertently learns of an employee's genetic information. For example, a manager may overhear an employee discussing his father's medical condition in the lunchroom. In those circumstances, employers should ensure that they do not base any employment decisions off of this information and refrain from sharing this information with others.