

Genetic Information Nondiscrimination Act (GINA) of 2008

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GINA includes two titles. Title I, which amends portions of the Employee Retirement Income Security Act (ERISA), the Public Health Service Act, and the Internal Revenue Code, addresses the use of genetic information in health insurance. Title II prohibits the use of genetic information in employment, prohibits the intentional acquisition of genetic information about applicants and employees, and imposes strict confidentiality requirements. GINA requires the EEOC to issue regulations implementing Title II of the Act.

GINA was passed to prohibit discrimination on the basis of genetic information. Two points, one, it creates a separate and distinct basis under anti-discrimination law and not merely a part of disability discrimination. The difference is with a medical disability there is a manifested condition that meets the requirements of a disability and with GINA there is the information about the presence of a gene. For example if someone has a detected gene for breast cancer, that is genetic information. If a person has breast cancer that is a condition covered under the American's with Disabilities Act (ADA). The main thing now is to not confuse it with disability basis as GINA establishes its own distinct basis.

Genetic discrimination occurs when people are treated differently by their employer or insurance company because they have a gene mutation that causes or increases the risk of an inherited disorder. People who undergo genetic testing may be at risk for genetic discrimination.

The results of a genetic test are normally included in a person's medical records. When a person applies for life, disability, or health insurance, in some countries the insurance company may ask to look at these records before making a decision about coverage. An employer may also have the right to look at an employee's medical records. As a result, genetic test results could affect a person's insurance coverage or employment. People making decisions about genetic testing should be aware that when test results are placed in their medical records, the results might not be kept private.

Fear of discrimination is a concern among people considering genetic testing. Several countries have laws that help protect people against genetic discrimination; however, genetic testing is a fast-growing field and these laws don't cover every situation.

Laws against discrimination

Those recommendations, and earlier ones issued by the ELSI Working Group and NAPBC led, in part, to new legislation and policies at both the federal and state levels. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 provided the first federal protections against genetic discrimination in health insurance. The act prohibited health insurers from excluding individuals from group coverage due to past or present medical problems, including genetic predisposition to certain diseases. It limited exclusions from group plans for preexisting conditions to 12 months and prohibited such exclusions for people who had been covered previously for that condition for 12 months or more. And the law specifically stated that genetic information in the absence of a current diagnosis of illness did not constitute a preexisting condition.

The next step in addressing the issue of genetic discrimination was taken by President Bill Clinton. The President had earlier supported proposed legislation that would have banned all health plans - group or individual - from denying coverage or raising premiums on the basis of genetic information. When the legislation failed to pass Congress, President Clinton issued an executive order (Executive Order 13145 to Prohibit Discrimination in Federal Employment Based on Genetic Information) in February 2000 prohibiting agencies of the federal government from obtaining genetic information about their employees or job applicants and from using genetic information in hiring and promotion decisions.

There continues to be a high degree of interest in these topics in state legislatures. More than one hundred bills were introduced in state legislatures in 2000 alone. Some would inaugurate protection from genetic discrimination while others would modify or clarify existing legislation.

Legislation in the United States called the Genetic Information Nondiscrimination Act prohibits group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a genetic predisposition to developing a disease in the future. The legislation also bars employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions.^[5] It was signed into law by the President on May 21, 2008. The main thing now is to not confuse GINA with the disability basis as GINA establishes its own distinct basis. As questions come up it's best to consult your agency legal advisors. For additional information visit the following websites.

References:

www.eeoc.gov

www.jan.wvu.edu

www.ada.gov