



News

Ambrose McCall Author's Article, "Gina - We Hardly Know You Yet"

February 12, 2011

On November 9, 2010 the EEOC issued its [Genetic Information Nondiscrimination Act](#) (GINA) related regulations. 29 C.F.R. Part 1635. These regulations became effective on January 10, 2011. *Id.*, at Summary. The EEOC acted pursuant to its authority granted by 42 U.S.C. §2000ff. The agency clarified the purpose for its regulations implementing Title II of GINA, found at 42 U.S.C. §2000ff et. sec., known as Title II of GINA, which is to implement the prohibition against the use of genetic data in employment decision making. 29 C.F.R. §1635.1(a)(1). The intent behind GINA is also to restrict employers and other entities subject to Title II of GINA from requesting, requiring or purchasing genetic data. 29 C.F.R. §1635.1(a)(2). Further, the regulations require that covered entities store genetic data as a confidential medical record and comply with strict limits on disclosure of such data. 29 C.F.R. §1635.1(a)(3). The regulations also clarify that GINA provides remedies for individuals whose genetic data is acquired, used, or disclosed in violation of the Act's protections. 29 C.F.R. §1635.1(a)(4).

There are exceptions to the scope and coverage of the EEOC's GINA regulations. They do not apply to covered entities to the extent the actions at issue do not relate to the status of an individual as an employee, member of a labor organization or participant in an apprenticeship program. 29 C.F.R. §1635.1(b). [A]lcohol and drug testing falls outside of GINA [when] solely detecting the presence of alcohol or illegal drugs. 29 C.F.R. §1635.3(f)(4)(i). A test, however, to find whether an individual has a genetic predisposition for drug use or alcoholism does constitute a genetic test covered by the GINA regulations. 29 C.F.R. §1635.3(f)(4)(ii).

Genetic data or information means information means information that includes the following:

- an individual's genetic tests;
- a genetic test of the individual's family members;
- the manifestation of disease or disorder in family members of the individual (family medical history);
- an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or
- the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and

Attorneys

Ambrose V. McCall



- the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

29 C.F.R. 1635.3(c)(1)(i)-(v).

The GINA amendments to ERISA and the Civil Rights Act, along with the recently promulgated EEOC regulations under Title II of GINA, do not stop there.