Limiting Employer Liability Under Genetic Information Nondiscrimination Act (GINA)

June 29, 2011

Claudia D. Orr
(313) 983-4863
corr@plunkettcooney.com

The Bulletin Newsletter - June 2011 Edition

As most employers now know, under the Genetic Information Nondiscrimination Act of 2008, 29 CFR 1635.8(b)(1)(i)(B), an employer should avoid "seeking" genetic information about their employees.

In general terms, this is information which would tend to show that the employee has a genetic propensity to certain medical problems in the future because the medical condition tends to run in families (i.e., certain kinds of cancer, heart disease, etc.).

The Equal Employment Opportunity Commission (EEOC) now suggests that the following language accompany any request to an employee for medical information:

Dear Employee/Healthcare Provider:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. **To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information.** "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

The above language should be in a form stapled to the front of any document used by the employer seeking medical information of the employee, including forms related to FMLA leave (except where leave is related to care of a family member), claims for short/long-term disability, worker's disability compensation benefits, or drug/alcohol testing, as well as for authorizations for treatment at industrial

 © 2024 Plunkett Cooney, PC

clinics.

Should the employer receive genetic information in return, the EEOC will likely find that the receipt of such information was "inadvertent" rather than intentional. Because this will provide a defense to any claim of a GINA violation, it is a recommended practice.

If you have any questions about GINA, please contact the author or your Plunkett Cooney employment attorney.

© 2024 Plunkett Cooney, PC