

## **Genetic Information Nondiscrimination Act Becomes Reality**

On Wednesday, May 21, 2008, President George W. Bush signed the Genetic Information Nondiscrimination Act (GINA). GINA was passed to prevent health insurers from canceling, denying, refusing to renew, or changing the terms or premiums of coverage based solely on a genetic predisposition toward a specific disease. Employers should be aware that the legislation also prohibits employers from using individuals' genetic information when making hiring, firing, promotion, and other employment-related decisions. Other prohibitions under GINA include the following:

- Employment agencies are barred from failing to or refusing to refer a worker for employment
- Labor unions are barred from excluding or expelling a member based on genetic information
- Employment agencies, labor organizations, or joint labor-management committees are prohibited from making or trying to make an employer discriminate against an employee because of genetic information.
- Employers, employment agencies, and labor unions can't limit, segregate, or classify workers because of genetic information in any way that would deprive them of employment opportunities.

GINA also requires employers, employment agencies, and labor unions that possess any genetic information about workers to keep that information in separate files and to treat it as a confidential medical record. Also, a worker's genetic information may not be disclosed except in very limited circumstances.

The enforcement provisions of GINA are similar to Title VII of the Civil Rights Act. For example, as in Title VII cases, GINA claimants must file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) before filing a private lawsuit in court. After the EEOC conducts an investigation and issues a Notice of Right to Sue, the Claimant may pursue an action in court. The damages available under GINA also mirror Title VII's remedial scheme.

Entities covered by GINA have sufficient time to comply with the new law. GINA's prohibitions on employment discrimination take effect 18 months after the date of its enactment, November 21, 2009. The provisions barring genetic discrimination in health insurance apply to health coverage for plan years beginning after the one-year anniversary of enactment of GINA.