

Did You Know the EEOC Enforces Complaints about Misusing Genetic Information at Work?

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Many people know that the U.S. Equal Employment Opportunity Commission ([EEOC](#)) investigates claims of workplace discrimination related to an employee's race, gender, age, etc. But most of the public does not realize that the EEOC also enforces discrimination related to an employee's genetic information. To help spread the word, the information below is based upon the EEOC's [guidance](#) on this relatively new and far-reaching prohibition.

The EEOC investigates complaints under Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which became effective in 2009. While the EEOC handles employment-related claims under GINA, the law also prohibits discrimination based on genetic information when it comes to insurance, over which the Departments of Labor, Health and Human Services, and Treasury have jurisdiction.

Perhaps this general lack of understanding helps to explain the overall low volume of genetic information complaints at the EEOC. For example, in 2018, the agency received only about 220 complaints (.3% of the EEOC's caseload). More information about filing a charge of discrimination with the EEOC is available [here](#).

Given the law's mouthful of a name, you're probably wondering what exactly does it cover? According to the EEOC:

“an employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual's current ability to work.”

This prohibition applies to employment actions such as hiring, firing, pay, promotions, lay-offs, and other terms or conditions of employment.

Examples of complaints and lawsuits filed related to alleged misuse of genetic information by employers include: seeking information in a fitness for duty exam that is not job-related; employers failing to post required information about GINA in the workplace; and the AARP's lawsuit related

allowing employer's to use wellness programs to obtain genetic information/family medical history.

What then constitutes "genetic information" that cannot be considered by an employer when making a decision about employment? Per the EEOC, this includes information about:

- an individual's or an individual's family's genetic tests;
- the individual's family's medical history;
- an individual's request for genetic services or participation in clinical research that deals with genetic services; and
- genetic information of a fetus carried by a pregnant woman (whether she is the employee or a family member of the employee)

An employer may not, for example, reject an applicant based on genetic information, and the employer also cannot allow an individual to be retaliated against or harassed/subjected to a hostile work environment based on genetic information.

Under Title II of GINA, employers are also generally prevented from asking for genetic information, with six exceptions:

1. inadvertently finding out about the information (for example, overhearing an employee talking about a family member's medical condition);
2. obtaining information as part of health services, including wellness programs, offered voluntarily by the employer;
3. family medical history required by the certification process for the Family and Medical Leave Act (FMLA) where an employee is asking for leave to care for a family member with a serious medical condition;
4. finding out about the genetic information through documents like newspapers, so long as the employer is not intentionally searching for the employee's genetic information;
5. acquiring genetic information through a genetic monitoring program related to biological effects of toxic substances, but usually only where such monitoring is required by law; and
6. getting genetic information from employees during DNA testing for law enforcement purposes , but the information can only be used for analysis of DNA markers for quality control

Finally, if an employer receives genetic information about applicants or employees, the employer must keep it confidential and in a separate medical file.

What does this all mean? For employers, these little-known legal requirements could add up to big trouble if protocols about medical information collecting are not in place. For employees, think twice about what health information is being requested by your employer before simply handing it over

without a second thought.

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