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**\*\*EMPLOYMENT LAW ALERT\*\***

By: S. Whitney Rahman

Title II of the Genetic Information Nondiscrimination Act (“GINA”) went into effect on November 21, 2009. The Act prohibits discrimination or retaliation by employers on the basis of genetic information. It applies only to employers with 15 or more employees. Many employers believe that GINA is not an issue for them, because they do not collect genetic information on employees. You should be aware, however, that the law is far more wide-reaching than it may first appear.

For example, if your company has pre-employment post-offer physical examinations performed, as allowed under the Americans with Disabilities Act (“ADA”), and if the physician asked family history information and makes a recommendation based on the information received, your company would be in violation of GINA. Similarly, if a supervisor hears through the grapevine that an employee’s parent has suffered a stroke, and decides to terminate the employee to avoid additional health care costs that might occur if the employee has a stroke, the employer has violated GINA. While you will expect that your supervisors and managers would not use such information against an employee, it is not hard to imagine a situation wherein a family illness or condition becomes known in the workplace, the employee later is terminated for reasons unrelated to the illness, but the employee brings a GINA claim, alleging that the termination was based on the family illness. GINA therefore provides yet another weapon in an employee’s arsenal of potential discrimination claims against his or her employer.

**What does this mean for you?**

At a minimum, you should:

1. Ensure that you have posted the new EEOC posters which are available at the EEOC’s website: [EEOC.gov/employers/poster.cfm](http://EEOC.gov/employers/poster.cfm).
2. Be sure to update your company’s equal employment opportunity statement (which may appear in the employee handbook, and possibly elsewhere, such as the

company website) to reflect that the company will not discriminate on the basis of genetic information.

3. Train your management and supervisors about the law, so that they are aware of what may constitute a violation of the law.
4. Work with your health care practitioners who provide any pre- or post-employment medical examinations to ensure that they refrain from obtaining family medical histories.
5. Make sure that any genetic or family history information documentation obtained is held separately from the employee's personnel file. It can be held in a separate medical file (which you already may have, as set forth under the ADA), and which must be kept confidential and in a locked area.
6. Train management, supervision and staff to refrain from seeking information about family illnesses, except as needed, such as to process forms for FMLA leave to care for a family member with a serious illness.

If you have any questions about GINA, feel free to call Whitney Rahman or John Roland at 610-372-5588.