

Advocacy Recommends that EEOC Provide Clarifications and Guidance on Genetic Information Nondiscrimination Act Regulations

On April 24, 2009, the Office of Advocacy (Advocacy) filed a comment letter with the Equal Employment Opportunity Commission (EEOC) on their Notice of Proposed Rulemaking (NPRM), *Regulations Under the Genetic Information Nondiscrimination Act of 2008 (GINA)*. A complete copy of Advocacy's letter to the EEOC may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- GINA prohibits discrimination by health insurers (Title I) and employers (Title II) based on genetic information. GINA protects the following predictive genetic information: 1) an individual's genetic tests, 2) the genetic tests of family members and 3) the manifestation of a disease or disorder in family members (also known as family medical history).
- The EEOC's proposed rule implements Title II of GINA, which prohibits employers from using genetic information to make employment decisions, such as hiring, firing and compensation. Title II of GINA applies to employers with 15 or more employees and becomes effective on November 21, 2009. Employers that violate GINA could be liable; damages are limited by the statute to no more than \$300,000.
- Title II also restricts the deliberate acquisition of genetic information by employers. The rule has exceptions for situations where an employer inadvertently requests or receives information, either through casual conversations or through materials in support of an employee's request for leave or a reasonable accommodation under the Americans with Disabilities Act. Title II also requires that employers keep genetic information confidential, and disclosure is permitted in limited circumstances.
- Because small business representatives are concerned that employers may have a difficult time implementing these complex regulations, Advocacy recommended that the EEOC clarify the definitions, prohibitions and exceptions in this rule. Advocacy also recommended that the EEOC provide a small business compliance guide that provides practical examples of prohibited conduct, employer best practices, and the interactions between GINA and local, state and federal workplace rules.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at Janis.Reyes@sba.gov or by phone at 202-205-6533.