



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Subject: **INFORMATION:** Genetic Information  
Nondiscrimination Act of 2008

Date: November 20, 2009

From: Victor M. Mendez  
Administrator

In Reply Refer To: HCR-40

To: All Employees

On May 21, 2008, the Genetic Information Nondiscrimination Act of 2008 (GINA) was signed into law. The effective date of the GINA is November 21, 2009.

The GINA prohibits Federal employees from making employment related decisions based on an individual's genetic information. Genetic information includes genetic tests of the individual or the individual's family members, information about diseases, disorders, and family medical history.

Based on the requirements of the GINA, genetic information has been added as a basis in the Equal Employment Opportunity complaint process. Attached is additional information regarding the GINA from the U.S. Equal Employment Opportunity Commission.

If you have any questions, please contact Ms. Thalia Williams, Equal Opportunity Specialist, at 202-366-1595 or [thalia.williams@dot.gov](mailto:thalia.williams@dot.gov).

Attachment

cc:

HOA-2

HOA-3



## Genetic Information Discrimination

***The Genetic Information Nondiscrimination Act of 2008, which prohibits genetic information discrimination, takes effect on November 21, 2009.***

It is illegal to discriminate against employees or applicants because of genetic information.

Genetic information includes not only information about an individual's genetic test and the genetic tests of an individual's family members, but also information about any diseases, disorders, or conditions that someone's family member has. The law includes family medical history because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

It is also against the law to retaliate against (i.e., take a negative job action or threaten) a person because the person complained about genetic discrimination, filed a charge of discrimination, or participated in an employment discrimination inquiry, investigation or lawsuit.

EEOC enforces the part of the Genetic Information Nondiscrimination Act that applies to employers; other agencies enforce the part of the law that applies to health insurance providers.

## Genetic Information Discrimination and Work Situations

The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. There are no situations in which it is permissible to use genetic information to make an employment decision.

## Rules Against Acquiring Genetic Information

It will usually be unlawful for an employer to get genetic information. There are six narrow exceptions to this prohibition:

Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member's illness.

Genetic information (such as family medical history) may be obtained as part of health or genetic services, such as a wellness program, that an employer provides on a voluntary basis.

Genetic information may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition.

Acquisition through commercially and publicly available documents like newspapers is permitted, as long as the employer is not searching those sources with the intent of finding genetic information.

Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.

Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

## **Confidentiality of Genetic Information**

It is also unlawful for employers to disclose genetic information about applicants or employees and employers must keep genetic information confidential and in a separate medical file (genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act). There are limited exceptions to this non-disclosure rule.

## **Genetic Information Discrimination and Harassment**

It is unlawful to harass someone because of his genetic information. Harassment can include, for example, offensive or derogatory remarks about an applicant or employee's genetic information, or the genetic information of a relative of the applicant or employee. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

## **Employment Policies/Practices**

It will usually be unlawful for an employer to get someone's genetic information or to reveal someone's genetic information.

An employer may never use genetic information to make an employment decision, because genetic information doesn't tell the employer anything about someone's current ability to work.