



DNA Test To Find Defecator Just One Way To Violate GINA

News

6.24.15

C.R. Wright was quoted in the *Law360* on June 24, 2015. The article “DNA Test To Find Defecator Just One Way To Violate GINA” discussed Georgia federal court’s decision that a grocery storage company violated a law barring genetic discrimination by trying to get a DNA swab of employees in a bid to find a serial defecator.

C.R. was quoted on his take of the case.

“I think the case and the publicity it has received will result in more employees being educated about what GINA really prevents,” C.R. said. “That’s what will come out of it.”

The suit is the first of its kind to involve an employer that overtly collected DNA information to use for likely adverse employment purposes, C.R. said.

Judge Amy Totenberg’s ruling, which ultimately led to the trial and the multimillion-dollar verdict, has stood out because the storage company wasn’t forcing the testing to obtain information about its employees’ predisposition toward disease. However, employers shouldn’t take comfort in the fact that they’re not committing the same mistakes as the grocery storage company, C.R. said.

“When I do my presentations and webinars on GINA, it’s amazing how many still just don’t know the things they are not allowed to do,” C.R. said.

For example, if a manager accidentally overhears some employees discussing a relative’s health situation, that is generally not an exposure to liability under GINA, he said. However, if that same manager were to act beyond the accident and make an effort to hear the conversation more substantively, that is an unlawful acquisition of genetic information, he said.

Even if that manager does nothing with the information, it’s still an illegal acquisition of the information, C.R. said.

Asking about family medical history could also land an employer in the hot seat, even if the family in question is not genetically related to the employee, such as a spouse or stepchildren. That’s because, under GINA, the definition of “genetic information” goes beyond the common understanding of things like DNA, C.R. said.

That potential liability could be as unique as the circumstances that inspired it, but C.R. said companies would be wise to avoid any “expensive lesson.”

“The biggest takeaway is that employers must train and educate their managers, supervisors and human resources staff, so they know all of the things that GINA prohibits ... [and] think many, many times before requesting from an employee or applicant anything that falls within the definition of genetic info under GINA,” he said.

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