



Time to Prepare for a New Civil Rights Law

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On Nov. 21, employers will be required to comply with yet another federal law that restricts disclosure of employee health information. Specifically, the Genetic Information Nondiscrimination Act of 2008 will join the Americans with Disabilities Act, and the Family and Medical Leave Act as federal laws that restrict what you can and can't do with employee medical information. GINA, which overwhelmingly passed both houses of Congress last year, was hailed by Sen. Ted Kennedy as "the first major new civil rights bill of the new century." Although Oregon and 36 other states already have genetic information laws on the books, GINA will ensure wide-sweeping and consistent coverage across the country.

GINA takes the confidentiality requirement one step further than the ADA and FMLA. It will prohibit employers from discriminating against employees and applicants because of their genetic information, and also will require confidentiality for any genetic information received by the employer. Moreover, GINA will prohibit employers from requesting or acquiring an employee's or an employee's family member's genetic information.

Here is a complete list of suggestions to ensure compliance with GINA:

- Separate health information from other personal information and restrict access to the information.
- Carefully consider how much information to disclose before you separate it. For example, supervisors may need to know an employee has restrictions, but they most likely do not need to know the exact condition or diagnosis.
- When communicating about an employee's condition via e-mail, copy only those individuals who meet the "need to know" test.
- Remember that even if the information does not meet the definition of medical information protected under the ADA, GINA privacy laws may limit disclosure.

If you receive a subpoena for an employee's personnel records, check with your legal counsel before turning over medical information. Between the ADA, FMLA, HIPAA and GINA, there may be some restrictions necessary in order to comply with the subpoena, but stay on the right side of federal law.

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Richard R. Meneghello
Chief Content Officer
503.205.8044
[Email](#)