



GINA Strikes The Long Term Care Industry

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Ted Boehm's article "GINA Strikes the Long Term Care Industry" was featured in *Advance Healthcare Network Executive Insight* on June 23, 2014. Ted provides insight into the Genetic Information Nondiscrimination Act (GINA) which has been an active federal law for five years.

Enacted in 2008, GINA generally prohibits employers from engaging in three types of conduct.

- GINA prohibits employers with 15 or more employees from discriminating against an employee on the basis of the employee's genetic information. "Genetic information" is rather broadly defined and includes information from genetic tests, the genetic tests of family members and family medical history, but it does not include an individual's race and ethnicity.
- GINA prohibits employers from requesting an employee's genetic information, subject to certain exceptions.
- GINA prohibits employers from retaliating against an employee who has opposed a practice made unlawful by GINA.

Unknowing or unintentional violations of GINA are perhaps the most worrisome type of violations since they are the most likely to occur. This is particularly true for employers that rely on dated, pre-GINA human resources documents (including employment applications) or employment policies. Employers should update existing non-discrimination and anti-harassment policies and handbooks so that discrimination/harassment on the basis of genetic information is clearly prohibited. Similarly, employers should update FMLA and ADA forms to include the requisite "safe harbor" language that warns employees and health care providers not to provide genetic information. Employers should also ensure that an employee's medical information is maintained separately from the employee's personnel file, as required by the law.

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