

BENEFITS & COMPENSATION/ LABOR & EMPLOYMENT

>> ALERT

GINA REQUIRES IMMEDIATE UPDATE TO EEO POSTERS AND POLICIES AND POSSIBLE REVISION OF BENEFIT PLANS

In October, the Department of Health and Human Services (HHS) issued new regulations relating to the Genetic Information Non-Discrimination Act (GINA), which go into effect on November 21, 2009. Affected employers, however, must take action in advance of that date.

GINA prohibits discrimination by employers and health insurers on the basis of genetic information, including, for example, an applicant's or employee's genetic predisposition for certain illnesses. The law was designed to help ensure that genetic information is not used adversely in determining employment or health care coverage.

Employers with 15 or more employees must immediately post updated EEOC posters reflecting the new law. Employers can supplement existing posters by posting the "EEO is the Law" Poster Supplement, available at: http://archive.eeoc.gov/gina_supplement.pdf, or by posting an updated "EEO is the Law" poster, available at: http://archive.eeoc.gov/self_print_poster.pdf.

Employers should also review EEO/unlawful harassment policies to determine whether they need to be updated to comply with GINA.

In addition to updating EEOC posters and EEO/unlawful harassment policies, employers should immediately review health benefit plans to ensure compliance with the new law. This is particularly critical for employers that offer Health Risk Assessments (HRAs) alongside their health benefit plans. Many HRAs ask employees to provide personal medical information that may be covered by GINA (e.g., family medical history and other information that may be deemed "genetic information"). If employers offer HRAs, they should immediately contact legal counsel and/or their HRAs provider to determine if changes are necessary.

Employers can learn more about GINA by reviewing the guidance recently published by the HHS, available at: http://www.hhs.gov/ohrp/human_subjects/guidance/gina.html.

THE BOTTOM LINE

Employers must immediately update EEOC posters and review EEO/unlawful harassment policies and group health plans to determine whether they must be revised. Timing is particularly key for those employers who are in the midst of or are about to begin 2010 open enrollment for benefit plans.

FOR MORE INFORMATION

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