

Health Information Compliance Alert

Information Management: Prepare for GINA By Starting to Implement Changes Now

Tip: Revise your employee documents to eliminate genetic info requests

On May 21, **President Bush** signed the Genetic Information Nondiscrimination Act (GINA) into law.

What that means to you: You'll soon need to make sure your non-discrimination policies include non-discrimination on the basis of genetic information.

The details: GINA prohibits you as an employer from asking workers about their genetic information or using any genetic information to make any decisions regarding hiring, firing, promotions or job assignments. The law also makes it illegal for health insurance companies to require potential beneficiaries to take genetic tests or to use genetic information to deny coverage or determine rates.

Best bet: Start preparing now. "Although GINA does not become effective until November 21, 2009, employers should immediately begin taking steps to ensure compliance with the Act," say **Phillip L. Gordon, JD, BA**, Chair of Littler Mendelson's Privacy and Data Protection Practice Group in Denver and **Jennifer L. Mora, JD, BA**, an associate with Littler in Portland, Ore.

"The Act itself suggests the following actions that employers should consider taking by the effective date," Gordon and Mora say:

- Add non-discrimination on the basis of genetic information to equal employment opportunity statements;
- Discontinue requests to applicants and employees to provide a family medical history;
- Avoid requesting information about the manifested disorders or diseases of an employee's family members for leave requests unrelated to the FMLA or state analogues;
- Evaluate whether any changes are necessary in connection with the administration of health benefits;
- Screen all employee medical information upon receipt to determine whether that information might fall within the broad definition of "genetic information" and, if so, provide required confidentiality protections; and
- Implement policies and procedures to prevent the inadvertent disclosure of genetic information in response to a subpoena or civil discovery request unaccompanied by a court order compelling disclosure.