

Pros and Cons of the Genetic Information Non-discrimination Act of 2007

By CPM Business Attorneys

Genetic discrimination occurs when individuals are treated differently in the workplace due to an employer's knowledge about a gene mutation that causes or increases the risk of an inherited disorder. Currently, when a person applies for life, disability, or health insurance or applies for a job, insurance companies and employers may look at records of genetic mutations before making a decision about coverage or employment. As a result, people known to carry a gene that increases their likelihood of developing a disease may be turned down for health insurance or for a job/promotion.

The Genetic Information Nondiscrimination Act of 2007 (GINA) was passed by the U.S. House of Representatives on April 25, 2007. Its stated purpose is to "prohibit discrimination on the basis of genetic information with respect to health insurance and employment." The Act would make it illegal for a public or private group health plan or insurer to base coverage, eligibility, premiums or contribution decisions for an individual or family on genetic information or a genetic predisposition to disease. The Act also amends federal privacy regulations to encompass genetic information.

What about employers? The Act would also make it illegal for an employer to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information regarding the employee and the employee's family member. As of April 10, 2007, a written report issued by the Senate Committee on Health, Education, Labor, and Pensions was sent to the Senate for consideration.

The following are some of the pros and cons of GINA:

PROS

- If an insurer or employer inadvertently obtains genetic information, this may not be a violation of GINA.
- GINA defines genetic information in a way that will protect employers and insurers from wrongful claims of genetic discrimination.

CONS

- GINA would protect not only individuals from genetic discrimination, but also dependents and relatives.
- The Act will prevent insurers and employers from reducing risks and thereby costs. Without access to genetic information, employers and insurers cannot allocate financial risks. Because it is economically rational for insurance companies to charge a high risk individual a higher premium, insurance companies would likely share the risk among insureds, thus increasing the price of products.
- Employers and insurers will be forced to take on additional administrative costs when training employees concerning genetic privacy and when implementing systems to prevent such information from being improperly used.

If you have questions or would like more information, contact your CPM attorney.