

Federal Law Prohibiting Genetic Discrimination Takes Effect on November 21, 2009

By Kai McGintee | November 16, 2009

The Genetic Information Nondiscrimination Act of 2008 (“GINA”) takes effect on November 21, 2009. GINA, which prohibits discrimination based on the use of genetic information by employers, applies to private and state and local government employers with 15 or more employees.

GINA prohibits discrimination based on genetic information and restricts employers’ ability to request or disclose such information. Genetic information protected under the Act includes information about an individual’s genetic testing information and the genetic tests of an individual’s family members. The law also includes information about the manifestation of a disease or disorder in an employee’s family member.

Several states, including Maine and New Hampshire, already prohibit employment discrimination based on genetic information and genetic testing. However, GINA’s definition of “genetic information” is broader than Maine’s Genetic Information Privacy Act and, unlike the Maine law, includes restrictions on the disclosure and acquisition of such information. New Hampshire’s Genetic Testing Law is also narrower than GINA in the sense that it prohibits employers from discriminating on the basis of genetic test results, but does not cover discrimination based on “genetic information.” Accordingly, as the effective date for this federal law approaches, employers should familiarize themselves with the provisions of GINA.

The EEOC is charged with enforcing GINA and has released an updated version of the “Equal Employment Opportunity is the Law” poster to reflect changes in federal employment discrimination law, including GINA. The poster is available at: http://archive.eeoc.gov/self_print_poster.pdf

With the effective date of GINA right around the corner, employers should consider amending their policies to prohibit discrimination based on genetic information and train supervisors and managers on the prohibitions contained in GINA and the types of information that they can and cannot discuss with employees. If you need any assistance in doing so, please contact Kai McGintee (kmcgintee@bernsteinshur.com) in Portland (207 774-1200) or Andrea Johnstone (ajohnstone@bernsteinshur.com) in Manchester (603 623-8700).