GETTING TO KNOW GINA:

Avoiding the Pitfalls of the Genetic Information Non-Discrimination Act

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BLOOD, BONES & PRATTLE

GINA prohibits discrimination in health coverage and employment based on genetic information.

- **Genetic test**=DNA, RNA, chromosomes, genetic protein mutations, metabolites, BRCA1 or BRCA2, hereditary nonpolyposis colon cancer, Huntington’s Disease, cystic fibrosis sickle cell anemia, spinal muscular atrophy, fragile X syndrome, amniocentesis, PKU, genetic predisposition for alcoholism or drug use
• NOT sex, age, race or ethnicity

• NOT tests for infectious diseases, cholesterol or liver function

• NOT disclosure of any manifested disease, disorder or pathological condition except for the genetic information related to such existing condition

• **What do GINA and HIPAA have in common?**

Medical privacy requires another locked filing cabinet separate from personnel files. Electronic files require a password for protection. Mark genetic information as “GINA: CONFIDENTIAL” since more limited exceptions for disclosure without a court order. This rubber stamp should label older documents (pre-GINA) as well as recent ones.

• **What do GINA, ADA and Title VII have in common?**

Update your posters & handbooks! Non-discrimination statements must include protection on the basis of genetic information.

The same reporting procedures, anti-harassment and non-retaliation protections apply.
Hiring, discharge, compensation, or terms, conditions, or privileges of employment are covered.

Protected activity includes opposition to any act or practice made unlawful by GINA or because the person made a charge, testified, assisted, or participated in an investigation, proceeding or hearing under GINA.

- **Employee Wellness Programs & Health Risk Assessments:**
  
  - Must be voluntary
  
  - Obtain prior informed written authorization
  
  - No financial inducement UNLESS:
    
    - Family medical history questions are voluntary
    
    & clear language that inducement is available regardless of whether genetic questions are answered

- **Inadvertent Acquisition Exceptions:**
  
  - Conversation overheard
  
  - Casual conversation without probing
  
  - Unsolicited email & INVITED Social Network
• **Lawful Acquisition of Genetic Information:**
  
  Document reasonable accommodation request
  
  Document FMLA request
  
  Support other ADA leave request
  

• **Magic SAFE HARBOR Language:**
  
  “The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member, except as specifically allowed by this law. To comply, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information,’ as defined by GINA, includes an individual’s family medical history, the results of an individual’s or individual’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”
• District has a duty to inform health care providers NOT to collect genetic information when medical examinations are required for employment or to determine the ability to perform a job.

• PERMITTED DISCLOSURE:

  1. To employee/family member by written request
  2. To occupational/health researcher per 45 CFR part 46
  3. To comply with court order
  4. To federal officials investigating GINA compliance
  5. For FMLA compliance with certification
  6. With notification, to public health officials if imminent hazard of death or life-threatening illness from contagious disease is present

• TASB Policy DAB (LEGAL) will be updated this spring

• Complete federal regulations (67 pages) at: