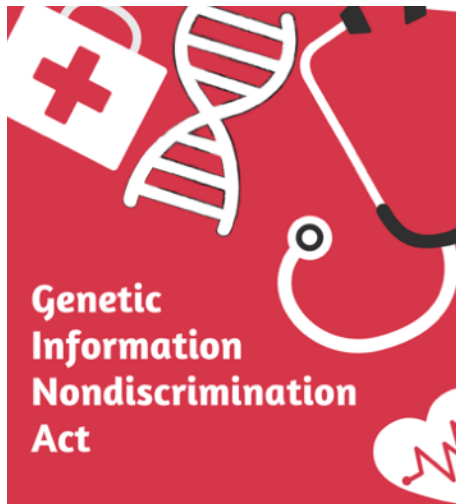




COMPLIANCE @ WORK

advancing workplace rights, safety & health, and accessibility in the legislative branch



The Congressional Accountability Act extends to legislative branch employees the protections under Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).

“ [This bill] means that people whose genetic profiles put them at risk of cancer and other serious conditions can get tested and seek treatment without fear of losing their privacy, their jobs, and their health insurance. It is the first civil rights bill of the new century of the life sciences.”

— late Senator Ted Kennedy

What is GINA?

At the time the Genetic Information Nondiscrimination Act of 2008 (GINA) was passed, lawmakers were concerned that scientific advancements in human genetics could lead to discrimination by health insurance companies and employers based on genetic information. As access to genetic information is becoming more common, it is worth revisiting the law's employment protections.

What is “genetic information?”

In addition to information and testing concerning an individual employee's genetics, the term “genetic information” includes:

- family members' genetic tests;
- family medical history;
- requests for and receipt of genetic services by an individual or family member; and
- genetic information about a fetus or embryo legally held by an individual or family member.

What does the law do?

GINA makes it unlawful for employers to discriminate against covered employees on the basis of genetic information. The following chart illustrates how employing offices in the legislative branch may or may not use genetic information.

PROHIBITED	LAWFUL
Requesting, requiring, or purchasing genetic information	Requesting <i>medical information</i> to certify requests for Family and Medical Leave or reasonable accommodation under the Americans with Disabilities Act (ADA) or the Rehabilitation Act.
Disclosing genetic information	Acquiring genetic information through accidental disclosure by an employee
Retaliation for opposing practices that violate GINA or filing, testifying, or participating in a GINA charge	Genetic monitoring that is required by law, provided on a voluntary basis, or for law enforcement purposes
Harassing individuals on the basis of genetic information	Requesting genetic information in connection with a voluntary wellness program

“ Like race and gender bias, genetic discrimination is based on the unchangeable – yet it also requires a deliberate effort to obtain gene data in order to discriminate.”
 - Former Senator Olympia Snowe

Examples of GINA discrimination

Office X requires applicants to complete a post-offer medical examination. Applicants are required to provide information about whether they have a family medical history of cancer, heart disease and other chronic illnesses. Although qualified for the position, one applicant's medical exam reveals he suffers from a hereditary eye disorder. As a result of the exam, the applicant's offer is rescinded.

GINA prohibits soliciting family medical history from a prospective employee.

Office Y requires job applicants to disclose disabilities and/or family medical history during the application process.

GINA prohibits employers from requesting or requiring family medical history from job applicants or employees, except in very limited circumstances. The ADA prohibits all pre-offer, disability-related inquiries, but permits them at the post-offer, pre-employment stage, as long as the employer asks for the information from all conditional-offer employees in the same job category.

After employment, employers may make disability-related inquiries only if they are job-related and consistent with business needs. GINA and the ADA require that employers keep confidential genetic and any other medical information obtained from disability-related inquiries. Such information must be stored separately from other personnel files.

Company Z requires post-offer, pre-employment medical exams for applicants and annual medical exams for employees. The medical exam includes detailed family medical history information. Company Z refuses to hire women whose medical exam reveals that they were pregnant during the application process.

GINA prohibits requesting family medical history. Pregnancy discrimination is also unlawful under the CAA.



GINA violations are rarely isolated incidents

Genetic discrimination is often accompanied by other types of discrimination. The CAA incorporates Title VII of the Civil Rights Act, which prohibits discrimination on the basis of race, color, religion, sex, or national origin. All personnel actions, such as hiring, discharge, promotion, pay, or benefits, must be free from discrimination. An individual is also entitled to discrimination or harassment protection under the CAA if they are a qualified individual with a disability as defined by the ADA or the Rehabilitation Act. These laws prohibit asking disability-related questions before a job offer is made.

Enforcement

The CAA requires that requests for counseling be brought to the OOC within 180 days after the alleged GINA violation. After the required period of counseling and mediation, an eligible employee may file an administrative complaint with the OOC or proceed with a civil action in federal district court.

More information:

Facts about the Genetic Information Nondiscrimination Act (GINA), U.S. Equal Employment Opportunity Commission
<https://www.eeoc.gov/eeoc/publications/fs-gina.cfm>