

On November 21, 2009, [the Genetic Information Nondiscrimination Act \(GINA\)](#) became effective. This federal law applies to all employers with 15 or more employees. GINA prohibits discrimination against employees based upon their genetic information. Genetic information includes family medical history. Here are the 7 most common mistakes employers are likely to be making right now under GINA:

- **Failing to Notify Employees About GINA:** Notices to employees regarding their rights under the equal employment opportunity laws must be updated to include notice regarding rights under GINA (and the Americans with Disabilities Amendment Act of 2009). Employers can obtain free posters at the [EEOC website](#), [here](#)

- **Failing to Establish Policy Against Sharing Genetic Information:** Because GINA creates liability for unauthorized disclosure of genetic information - even if it is lawfully obtained - employers should create and disseminate a published policy prohibiting employees from sharing other employees' genetic information.

- **Failing to Update Anti-Discrimination, Harassment, and Retaliation Policies:** Existing policies that prohibit [discrimination](#), [harassment](#), and [retaliation](#) should be revised to extend those prohibitions based upon GINA. Employees are now protected from discrimination or harassment based upon their genetic information, and employees are protected against retaliation for asserting rights under GINA.

- **Failing to Segregate Genetic Information as Confidential Medical Records:** Existing personnel records such as health insurance documents that contain genetic information, including family medical histories, should be immediately filed as confidential medical records and separated from the rest of an employee's personnel file. Confidential medical records should be available only on a limited, need-to-know-basis.

- **Obtaining Genetic Information During Fitness for Duty Examinations:** Employers that conduct pre-employment or return to work fitness for duty medical examinations should eliminate any portion of those examinations that included gathering genetic information.

- **Obtaining Genetic Information During Post-Employment Offer, Pre-Hire, Medical Examinations:** Previously authorized under the Americans with Disabilities Act, post-offer medical examinations that included obtaining family histories should be modified to eliminate the gathering of that information. Those examinations were less likely to include collection of other genetic information, but if the examination did include gathering genetic information, that practice should cease.

- **Ignoring GINA Limits on Using Genetic Information in Wellness Programs:** Employers with wellness programs that included gathering genetic information, including family medical histories, should take the steps required under GINA to ensure that the information is being gathered consistent with the narrow exception under GINA that permits gathering the information for wellness programs.