



EMPLOYERS BEWARE: GINA'S REQUIREMENTS AND PROHIBITIONS

Written by Allen S. Kinzer, Linda R. Mendel, Yolanda C. Vorys, from Vorys, Sater, Seymour and Pease LLP. Reprinted with permission.

The recently enacted Genetic Information Nondiscrimination Act (GINA) will affect most employers. As a result, it is imperative that employers familiarize themselves with its requirements and prohibitions. Generally, Congress enacted GINA to prevent discrimination on the basis of genetic information, which has the potential to proliferate because of the burgeoning advances in the field of genetics. Although many states already have laws that protect against genetic discrimination in health insurance and employment situations, the extent of the protection that such laws provide varies widely. GINA provides a uniform level of protection against discrimination for all Americans.

GINA is separated into three segments, but Title I and Title II are most relevant to employers. Title I of GINA applies to group health plans for plan years beginning on or after May 21, 2009, and the interim final regulations that implement Title I apply for plan years beginning on or after December 7, 2009. Together with already existing nondiscrimination provisions of the Health Insurance Portability and Accountability Act (HIPAA),

Title I prohibits group health plans and health insurers from requesting or requiring genetic information, or using such information for decisions regarding coverage, rates or pre-existing conditions. Title II of GINA, effective November 21, 2009, prohibits most employers from using genetic information for hiring, firing or promotion decisions, and any decisions regarding the terms of employment.

Both Title I and Title II define "genetic information" as information about (1) an individual's genetic tests; (2) genetic tests of the individual's family members; or (3) the manifestation of disease or disorder in family members of the individual. Genetic information does not include information about the age or sex of any individual. Title I and Title II will be discussed in greater detail below, as well as practical advice for employers.

Title I of GINA

In General. The prohibitions articulated in Title I and the regulations that implement it strengthen and clarify existing

(Continued on page 3)

Inside this issue:

GINA	1
Tech Tip: Scan and send documents	2
Taking Advantage: Free CLE Credit	5
WestlawNext	6
You & the Legal System: Tax Tips	7
Electronic Resources: Tax	7

Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street,
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5252

Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Tech Tip: 5 Simple steps to email scanned documents from our Law Library computer lab for FREE!

Written by Julie Koehne, Systems Librarian

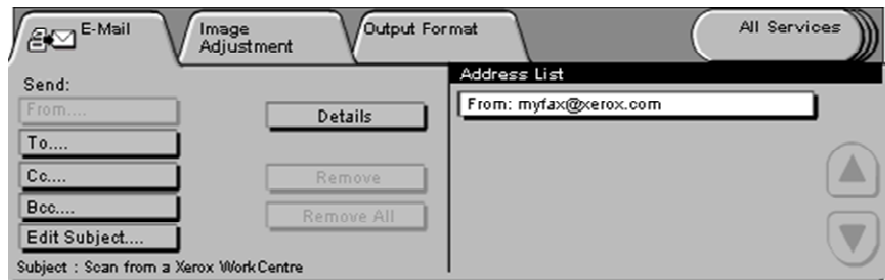
Step 1:

Load your document into the top feeder of printer.



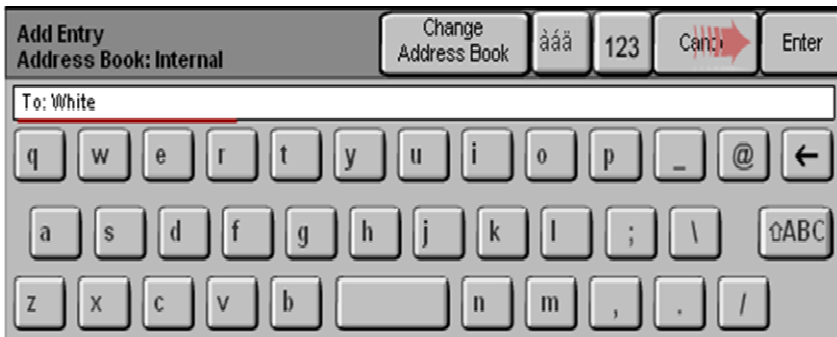
Step 2:

Select email by touching the screen.



Step 3:

Select To: in the Send: field on the left of the screen.

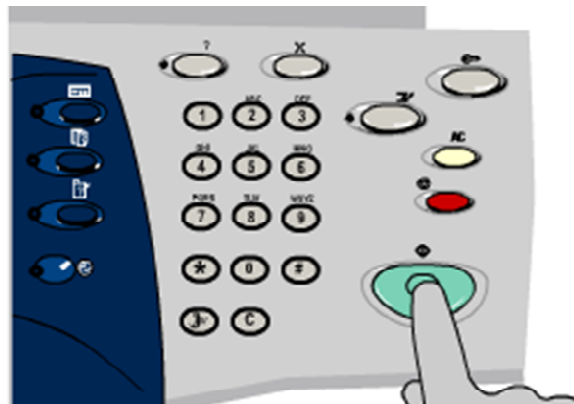


Step 4:

Input full Email address of the recipient using the keyboard, then select Enter in the upper right hand corner of screen.

Step 5:

Press the green start button and your document will be sent as a PDF attachment.



(GINA, continued from page 1)

HIPAA nondiscrimination and portability provisions. Generally, under Title I, group health plans and health insurers may not: (1) adjust premiums and contributions based on genetic information; (2) require that an individual or family member undergo a genetic test; or (3) collect genetic information for underwriting purposes or in connection with enrollment.

Impact on Health Risk Assessments. For employers, the most significant impact of Title I is its effect on the practice of requiring employees to complete health risk assessments (HRAs), which usually include family medical history, before enrolling in employment-based health insurance coverage. Many employers institute wellness programs to promote healthy behaviors among employees, and HRAs are often an intrinsic part of such programs. Employers should use caution with respect to HRAs for two reasons.

First, because under Title I genetic information cannot be collected prior to enrollment, employers are prohibited from asking about an individual's family medical history in an HRA that is completed before an individual is actually enrolled in a group health plan.

Second, the prohibition of collecting genetic information for underwriting purposes affects employers that utilize HRAs. "Underwriting" is broadly defined by the regulations under Title I to include "changing deductibles or cost-sharing mechanisms, or providing discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing an HRA or participating in a wellness program." The application of the underwriting prohibition is illustrated by examples in the regulations, one of which is set forth below:

Facts. A group health plan provides a premium reduction to enrollees who complete an HRA. The HRA is requested to be completed after enrollment and includes questions about the individual's family medical history. Neither the completion of the HRA or the responses given on the HRA have any effect on an individual's enroll-

ment status, or on the enrollment status of members of the individual's family.

Conclusion. In this example, the HRA includes a request for genetic information (that is, the individual's family medical history). Because completing the HRA results in a premium reduction, the request for genetic information is for underwriting purposes. Consequently, the request violates the prohibition on the collection of genetic information.

Tips for Compliance with GINA. As a practical matter, HRAs that request information regarding family medical history are permissible, but employers cannot offer incentives for the completion of the HRAs, and the HRAs must be completed after enrollment. Therefore, if employers ask employees to complete HRAs, or provide any sort of financial reward for the completion of the HRAs and the HRAs include questions about individual's family medical history, they are encouraged to revisit the arrangement in the near future. Moreover, employers should include statements in their HRAs providing that respondents should not include genetic information in their responses to prevent incidental collection of genetic information.

Title II of GINA

In General. Private and public employers with 15 or more employees are subject to Title II. Title II generally provides anti-discrimination prohibitions similar to those found in the other federal laws prohibiting employment discrimination and adds specific provisions concerning the treatment of genetic information. Specifically, Title II: (1) prohibits employers from discriminating on the basis of genetic information; (2) prohibits employers from intentionally acquiring genetic information from employees or applicants; and (3) imposes strict confidentiality requirements on genetic information. For example, Title II forbids employers from asking for genetic information in an interview or on a job application, or basing any workplace decisions related to the "terms, conditions or privileges of employment" on genetic information.

(Continued on page 4)

(GINA, Continued from page 3)

For employers, many potential hazards can be found in Title II and the regulations promulgated under it. Title II prohibits discrimination on the basis of genetic information with respect to a broad range of employment practices, including hiring, promotion, demotion, seniority, discipline, termination and compensation. Moreover, pursuant to Title II, employers are prohibited from limiting, segregating, or classifying employees in any way that would deprive them of employment opportunities or otherwise adversely affect them. Retaliation against those who file discrimination charges under GINA or testify in connection with a charge is also proscribed by Title II.

Inadvertent Acquisition of Genetic Information. Although an employer may not request, require or purchase genetic information of an employee or family member of an employee, the regulations offer a non-exhaustive list of exceptions regarding when inadvertent acquisition of genetic information does not violate GINA. These exceptions include requesting, requiring or acquiring genetic information: (1) inadvertently; (2) through health or genetic services offered to employees as part of a wellness program; (3) in compliance with FMLA (or similar state law) certification requirements; (4) through commercially or publicly available sources; (5) through genetic monitoring of the biological effects of toxic substances in the workplace; or (6) for law enforcement purposes.

When one of the foregoing exceptions applies, and an employer maintains genetic information concerning an employee or family member, Title II imposes strict confidentiality requirements. According to Title II, the genetic information must be regarded in the same manner as medical information. Specifically, genetic information must be kept apart from other personnel information with employees' medical records.

Tips for Compliance with GINA. Employers can take the following steps to ensure compliance with GINA: (1) revise equal employment opportunity statements to include a non-discrimination on the basis of genetic information statement; (2) review discrimination and harassment poli-

cies, family medical leave forms, and related employment practices to ensure they are not inappropriately requesting, receiving or using genetic information; (3) review all currently held employee medical information to determine whether that information may constitute genetic information; and (4) ensure that all genetic information is kept separate from personnel information.

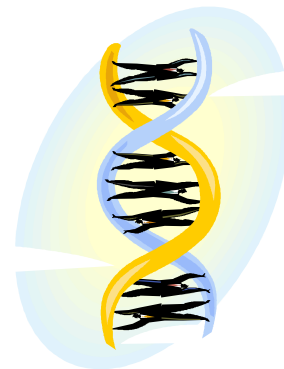
Penalties

Employers should not ignore GINA's requirements, because strict penalties can be imposed for violation of the statute.

Title I. For failure to meet the requirements of Title I, GINA provides that a penalty may be imposed on any plan sponsor (usually the employer), group health plan, or health insurer for failure to comply. The amount of the penalty is \$100 for each day in the noncompliance period with respect to each participant or beneficiary to whom the violation relates. The minimum penalty if there is more than one violation is \$2500, and if violations are more than de minimis, the minimum penalty is \$15,000.

Title II. If employers violate Title II, the remedies mirror those available to employees under Title VII—employees can recover compensatory and punitive damages, which are capped at \$300,000. Employees can also be reinstated to their former employment and recover pecuniary damages such as back pay, front pay in lieu of reinstatement and attorneys' fees.

Allen S. Kinzer, Linda R. Mendel, and Yolanda C. Vorys practice labor and employment law at Vorys, Sater, Seymour and Pease LLP.



Take Advantage: Enhance your researching skills and earn CLE credit for free

Learn more about IntelliConnect

On **Tuesday, March 2** your CCH representative will offer an introduction to IntelliConnect, CCH's newer online research platform.

1:00 IntelliConnect Essentials

Explore basic search functionality of IntelliConnect including:

- Available content
- Basic searching
- Browse feature
- Narrowing results
- Document Delivery
- Set up email alerts

2:30 IntelliConnect Federal Tax Library

Use the knowledge attained in the earlier CCH session to increase your efficiency and get better search results when using the Federal Tax Library. To register for this informative training, please call **946.5300** or email gherald@cms.hamilton-co.org to register.

Earn Free CLE Credit with Westlaw

On **Tuesday, March 16** your Westlaw representative, Denice Fogle, will offer the following class for **1 Ohio CLE credit** in the HCLL board room.

12:30 Westlaw Secondary Sources (1.0 Ohio CLE Credit)

Exploring Westlaw's secondary sources:

- Jury Verdicts for 50 states
- Form Finder
- Term & Connector search
- Narrowing results
- Keycite

1:45 Meet with your Westlaw Representative

After the class, meet with Denice Fogle in the computer lab to discuss any questions or concerns you may have about using Westlaw. She'll be happy to offer tips and suggestions for your current research projects. We hope you take advantage of this opportunity.

WestlawNext

Written by Mary Jenkins, Law Librarian & Director

The legal community is abuzz with news of WestlawNext, the new legal research platform that Thomson Reuters recently announced with plans for roll-out throughout 2010. You can get product information from the company at <http://west.thomson.com/westlawnext/>. You may have heard that Lexis is also working on a new search interface, referred to currently as “New Lexis” and scheduled for release sometime later this year. The [ABA Journal posted an article](#) in late January (link below) that begins like this: “There’s a battle about to break out on your computer screen.” With the arrival of upgrades from Wexis, plus the availability of competitor products like Fastcase, Bloomberg Law, Google Scholar, and other options, 2010 will certainly not lack for opinions on the way to go for your legal research.

While I have viewed demos and read all the chatter, we have no reliable word yet on its availability to law libraries so this article simply seeks to sum up the take on WestlawNext so far and to provide some facts. Let’s start with what it is. WestlawNext is an upgrade to “classic” Westlaw, a “new” approach to searching that offers natural language searching (“Can an employer require random testing of bodily fluids?”) and relevance ranking of the results. West notes that there is no plan currently to do away with the Westlaw familiar to many of us; this new product is considered an upgrade and an option. The word from law librarians involved in beta testing, generally, is that the product is simple and good.

Law firms can choose to stick with “classic” Westlaw while trying WestlawNext on a transactional fee basis. If a firm or a library switches to WestlawNext, it seems pretty clear that it will cost more, though the pricing model is, thus far, elusive, and we can expect it to vary, as is generally the case, from sector to sector (private law firms, solos, law schools, public law libraries, and so on).

The roll-out schedule is important: Adoption at law schools beginning later this year could drive decision-making at law firms. Since there are technical requirements and pricing considerations, firms and solo attorneys with a strong preference for Westlaw will want to start the planning process now.

All other considerations aside, the search & find process will be much improved with WestlawNext and, presumably, with “New Lexis”. Once the Hamilton County Law Library has some comparative data and more concrete information about the budgetary impact, we will upgrade or add products if warranted.

For further reading:

“WestlawNext” on the Thomson West website
<http://west.thomson.com/westlawnext/>

“Exclusive: Inside the New Westlaw, Lexis & Bloomberg Platforms”

<http://www.abajournal.com/news/article/exclusive-inside-the-new-westlaw-lexis-bloomberg-platforms/>

“WestlawNext: Read Our Exclusive Report”

<http://blog.technolawyer.com/2010/02/westlawnext.html>

“A First Look at WestlawNext”

<http://www.legaline.com/2010/01/first-look-at-westlawnext.html>

“My WestlawNext Upgrade Negotiations: Proof that West Isn’t Interested in the Solo Market”

<http://legalresearchandwritingpro.com/blog/2010/02/10/my-westlawnext-upgrade-negotiations-proof-that-west-isnt-interested-in-the-solo-market/>

“WestlawNext Preview: Product and Pricing”

<http://legalresearchandwritingpro.com/blog/2010/01/27/westlawnext-preview-product-and-pricing/>

You & the Legal System: Tax Tips

As a public service, the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association Lawyer Referral Service, will present **You and the Legal System: Tax Tips** with speaker **William E. Hesch, Esq.** on **Friday, March 19, 2010 at 12:00 noon** at the **Hamilton County Law Library**, Hamilton County Courthouse, 1000 Main St., Room 601, Cincinnati, Ohio. This program is free to the public and is designed for the non-lawyer citizen who is interested in understanding tax savings and planning, or who has questions regarding the same. This program will last approximately one hour.

Speaker: William E. Hesch, Esq., CPA, PFS manages his CPA and law firm in Oakley Square. Bill's CPA firm helps start-up companies and business owners save taxes and serves as their tax and business advisor. His law firm helps business owners and individuals find efficient solutions and strategies to legal problems and estate planning concerns. In 2010, *Cincy Magazine* recognized Bill as a leading lawyer in the Trust and Estate area for the sixth consecutive year.

Topic: Bill will review tax savings strategies for business owners and individuals, including Choice of Entity planning strategies as well as tax planning tips outlined in his firm's 2009/2010 Tax Planning Guide.

In addition, he will review the tax planning tips discussed on Channel 9, Good Morning Tri-State, in November and December, 2009. See his 2009/2010 Tax Planning Guide online as well as his recent Channel 9 interviews in the videos section of his CPA firm's website at www.heschcpa.com. Bring your tax questions and all questions will be answered as part of the presentation.

Please note that this is not a CLE event. However, attorneys may want to pass along the program announcement to clients, staff, and community organizations. For more information, please call 513.946.5300.

Hamilton County Law Library's Electronic Tax Law Resources

BNA's Tax and Accounting Center

This database includes:

- U.S. Income Portfolios
- Estates, Gifts and Trusts
- Tax Management Memorandum
- Interactive Forms
- Laws & Regulations
- Agency Documents
- Federal Tax Cases
- Tax Court Rules
- Court of Federal Claims Rules

CCH IntelliConnect

This database includes:

- Federal Tax Day
- Federal Tax Weekly
- Legislation Newswire
- Federal Excise Tax Report
- Tax-Exempt Advisor
- S Corporations
- LLC Advisor Newsletter
- Partnership Tax Watch
- Taxes—The Tax Magazine
- State Tax Day
- Estate and Gift Tax Report
- Financial Planning Ideas & Trends
- Estate Planning Review
- Practitioner's Strategies
- Journal of Retirement Planning
- State Cases

Please ask if you have questions about these, or other, library resources.



Save a Tree!

Are you currently receiving the Hamilton County Law Library News in print? Would you prefer an online version? Subscribers who opt for the online version receive it before the print copy is mailed, plus the links for email and websites are active. We send out a summary via email each month with a link to the full text. To switch from print to online, just email reference@cms.hamilton-co.org with a request to switch formats.



March 2010 Law Library Newsletter

INSIDE THIS MONTH

- GINA
- Tech Tip: Scan and send documents
- Free CLE!

ADDRESS CORRECTION REQUESTED

Hamilton County Law Library
Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202