



# WORKSITE WELLNESS AND GINA

GENETIC INFORMATION NONDISCRIMINATION ACT

October 2010

**M**INNESOTA EMPLOYERS who establish worksite wellness programs must comply with certain legal requirements. Important legal issues to consider are the HIPAA nondiscrimination regulations, the HIPAA Privacy Rule, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), the Minnesota Consumable Products Act, federal and state nursing mothers laws and federal income tax law. Please refer to the corresponding fact sheet for a description of each legal requirement. This fact sheet provides an overview of GINA as it applies to worksite wellness programs. When setting up a worksite wellness program, it is important to consult with an attorney to make sure that the program meets all legal requirements.

## Q What is the purpose of GINA?

**A**GINA protects people from discrimination by health insurers<sup>1</sup> and employers<sup>2</sup> based on genetic information.

*“An employer may not offer a reward for completing a health risk assessment if the assessment requests genetic information.”*

## Q What does GINA do?

**A**GINA prohibits employers with 15 or more employees from:

- » Having group premiums adjusted based on genetic information

- » Requesting or requiring that an employee or an applicant take a genetic test
- » Obtaining genetic information on employees before or in connection with enrollment or underwriting

## Q What is genetic information?

**A**Genetic information can be one of three things:

- » Data gathered as part of a genetic test on an individual
- » Data gathered as part of a genetic test on a family member
- » Data regarding the existence of a disease or disorder in a family member

## Q What are some examples of genetic tests?

A Examples include:

- » Tests for breast cancer (BRCA1, BRCA2)
- » Tests for colon cancer (HNPCC)
- » Tests for Huntington's Disease mutations
- » Tests for genetic properties of an existing tumor to help determine therapy
- » Carrier screening for disorders such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, and fragile X syndrome<sup>3</sup>

## Q What are some examples of services that are not considered genetic tests?

A Examples include:

- » Routine blood counts
- » Routine cholesterol tests
- » Liver function tests



## Q How does GINA apply to worksite wellness programs?

A There are three ways that GINA applies to a worksite wellness program:

- » An employer may not request genetic information from an employee before the employee is enrolled in the employer's health plan.
- » An employer may not request or require that an employee take a genetic test.
- » An employer may not offer a reward or penalize employees for completing a health risk assessment (HRA) if the assessment requests genetic information.<sup>4</sup>

**Example:** An employer's HRA includes questions

about employees' family medical history. The employer may not give a reward to employees who complete the HRA and may not ask an employee to complete the HRA before the employee is enrolled in the employer's health plan.

## Q What issues should I discuss with my attorney?

A

- » Does GINA apply to my business?
- » Am I requesting genetic information from applicants or employees?
- » If I am requesting genetic information, am I following all of the requirements of GINA in when I request it and how I use it?
- » Am I giving a reward to employees who provide genetic information or imposing a penalty on those who don't provide genetic information in an HRA?



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<sup>1</sup> 29 U.S.C. § 1182.

<sup>2</sup> 42 U.S.C. § 2000ff.

<sup>3</sup> JOHNS HOPKINS UNIVERSITY GENETICS AND PUBLIC POLICY CENTER, INFORMATION ON THE GENETIC INFORMATION NONDISCRIMINATION ACT, available at <http://www.dnapolicy.org/resources/WhatGINAdoesanddoesnotdochart.pdf>.

<sup>4</sup> 29 C.F.R. § 2590.702-1(d)(3).