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# LABOR AND EMPLOYMENT BULLETIN

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## PRESIDENT SIGNS GENETIC NONDISCRIMINATION BILL

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Today, President Bush signed into law H.R. 493, commonly known as the Genetic Information Nondiscrimination Act of 2008 (“GINA”). GINA’s scope is broad, in that it affects not only employment discrimination law, but also provides for genetic nondiscrimination in health insurance, including amendments to HIPAA, ERISA and the Internal Revenue Code. This *Bulletin* focuses on GINA’s employment-related provisions, which apply to employers, employment agencies, labor unions, and apprenticeship or job training programs.

GINA’s employment-related provisions prohibit discrimination (e.g., failing to hire, discharging, segregating, or any other adverse employment action) on the basis of “genetic information.” GINA defines “genetic information” as both genetic testing of an individual or the family member of an individual, and “the manifestation of a disease or disorder in family members,” which apparently includes the employee’s family medical history. GINA also contains an anti-retaliation provision.

Also, subject to certain exceptions, GINA makes it an unlawful employment practice for an employer to “request, require, or purchase” genetic information on its employees. Notable exceptions include: (1) inadvertent acquisition of genetic information; (2) acquisition of genetic information for purposes of a voluntary wellness program; (3) acquisition of genetic information pursuant to a request for leave under the Family and Medical Leave Act; and (4) acquisition of genetic information to be used for monitoring of the biological effects of toxic substances in the workplace. If an employer obtains any genetic information through one or more of these



exceptions, the information must be held separately and confidentially, just as medical information must be kept confidential under the Americans with Disabilities Act. Disclosure of genetic information is prohibited, subject to six specific exceptions.

Violation of GINA's employment-related provisions could subject the employer to the full range of remedies provided for under Title VII, including back pay, compensatory damages, punitive damages, costs and attorney's fees.

GINA's employment discrimination provisions will become effective 18 months from now. Within 12 months, the Equal Employment Opportunity Commission will issue final regulations interpreting GINA's provisions and providing further detail as to how employers can comply with GINA. We will provide you with further information as the EEOC works through the process of drafting and implementing its regulations.

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