



*Employment Litigation, Counseling and Training Practice Group*

Coughlin Duffy LLP represents corporate clients, from small family-run businesses to Fortune 500 companies, in all facets of employment law. We regularly appear and represent our clients throughout the country in state and federal trial and appellate courts, in administrative proceedings before federal and state agencies, and in arbitrations and mediations. We also provide day-to-day counseling, advice, training, and other assistance to our clients on all aspects of the employment relationship, from wage and hour, contract, and non-compete issues to family leave, disability, discrimination and harassment matters.

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## The Employment Law Lowdown

May 21, 2008

### E- ALERT

On May 21, 2008, President Bush signed into law the Genetic Information Nondiscrimination Act (GINA). GINA seeks to prevent the unauthorized or required genetic testing of employees by employers. It prohibits employers from denying a candidate a job or treating an employee differently based on the individual's genetic predisposition to an illness or condition. The act defines genetic information as an individual's genetic tests, the genetic tests of an individual's family members and the manifestation of an illness or disorder in the family members of an individual. Genetic services and participation in genetic research are also included in the act's definition of genetic information. It is important to note that GINA does not apply to the military. The provisions prohibiting workplace discrimination based on genetic information will become effective in November 2009.

GINA also prohibits insurance companies from denying coverage or charging larger premiums to individuals who are genetically predisposed to an illness or condition. The provisions regarding discrimination by insurance companies based on genetic information will become effective in May 2009.

Given that GINA provides employees with a broader basis of protection, employers should be mindful of a number of issues. First, employees may now offer their genetic information and later file a claim against their employer for the misuse of such information. Therefore, employers should refrain from questioning an employee about genetic tests or the results of such tests or whether a particular condition runs in the employee's family. Second, employers must keep any genetic information about an employee confidential unless the employee has authorized the release of such information by signing a medical authorization. Finally, the law provides a "water-cooler" exception which protects employers from liability if the employer inadvertently acquires genetic information.

**For more information about this new law, contact Leslie A. Lajewski or Steven J. Luckner.**

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