

Guidelines for Compliance with the Genetic Information Nondiscrimination Act GINA

A. Purpose of the Act

1. The purpose of GINA is to:
 - a. Prohibit the use of genetic information in employment decision making;
 - b. Restrict employers from requesting, requiring, or purchasing genetic information;
 - c. Require that genetic information be maintained as a confidential medical record, and place strict limits on disclosure of genetic information

B. Prohibited Practices or Activities

1. It is unlawful for an employer to discriminate against an individual on the basis of the genetic information of the individual in regard to hiring, discharge, compensation, terms, conditions, or privileges of employment.
2. An employer may not request, require, or purchase genetic information of an individual or family member of the individual. This prohibition does not apply where an employer inadvertently requests or requires genetic information of the individual or family member of the individual.
 - a. If an employer acquires genetic information in response to a lawful request for medical information, such as under the FMLA and ADA procedures, the acquisition will generally not be considered inadvertent unless the employer directs the individual and/or health care provider not to provide genetic information.
 - b. Receipt of any genetic information in response to the request for medical information will be deemed inadvertent if the following language is used:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information’ as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”
 - c. Situations to which this required language applies include:
 - i. Documentation requested to support a request for leave under the Family and Medical Leave Act (FMLA) or where an employee complies with the FMLA’s employee return to work certification requirements.
 - ii. Documentation requested to support a request for reasonable accommodation under the Americans with Disabilities Act (ADA).
 - iii. Documentation requested to support a request for a medically related leave under the university’s Discretionary Leave of Absence policy.

- d. Indiana University has modified its FMLA, ADA, and Worker's Compensation forms to include this required language. It should be added to any similar correspondence requesting medical information from employees or their families.
3. An employer must tell health care providers not to collect genetic information, including family medical history, as part of a medical examination intended to determine the ability to perform a job.

C. Definitions

1. *Employee* means an individual employed by the University, as well as an applicant for employment and a former employee.
2. *Family member* means with respect to any individual:
 - a. A person who is a dependent of that individual as the result of marriage, birth, adoption, or placement for adoption; or
 - b. A first-degree, second-degree, third-degree, or fourth-degree relative of the individual, or of a dependent of the individual.
 - i. First-degree relatives include an individual's parents, siblings, and children.
 - ii. Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.
 - iii. Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles/aunts, and first cousins.
 - iv. Fourth-degree relatives include an individual's great-great-grandparents, great-great-grandchildren, and first cousins once-removed (i.e., the children of the individual's first cousins).
3. *Family medical history* means information about the manifestation of disease or disorder in family members of the individual.
4. *Genetic information* means information about:
 - a. An individual's genetic tests;
 - b. The genetic tests of that individual's family members;
 - c. The presence of a disease or disorder in family members of the individual (family medical history);
 - d. An individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or
 - e. The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.
 - f. Genetic information does not include information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.
5. *Genetic monitoring* means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of

increased occurrence of mutations, caused by the toxic substances they use or are exposed to in performing their jobs, in order to identify, evaluate, and respond to the effects of, or to control adverse environmental exposures in the workplace.

6. *Genetic services* means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.
7. *Genetic test* means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.
 - a. The following are examples of tests or procedures that are not genetic tests:
 - i. An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes;
 - ii. A medical examination that tests for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites;
 - iii. A test for infectious and communicable diseases that may be transmitted through food handling;
 - iv. Complete blood counts, cholesterol tests, and liver-function tests.
 - v. A test for the presence of alcohol or illegal drugs is not a genetic test. However, a test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.
8. *Manifestation* means with respect to as disease or disorder, that an individual has been or could reasonably be diagnosed with the disease or disorder.

D. Confidentiality

1. Genetic information in writing about an employee or an employee's family must be maintained in medical files (including where the information exists in electronic forms and files) that are separate from personnel files and treated as a confidential medical record.
2. Genetic information about an employee or employee's family may be maintained in the same file in which confidential medical information subject to the ADA is maintained.

E. Posting of Notices

1. Every employer shall post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice to be prepared or approved by the EEOC setting forth excerpts from or, summaries of, the pertinent provisions of the regulations and information pertinent to the filing of a complaint.