

Requests for Medical Leave

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Requests for Medical Leave

Reference Number: MTAS-862

Requests for Medical Leave: FMLA/ADA/Worker's Compensation

GINA specifically prohibits an employer from asking about an employee's family genetic health information. There is an exception to this: when the employer is specifically asking for medical info for purposes of FMLA/ADA/Workers' Compensation certification it should be following certain steps in order to make sure it falls within the exceptions that are allowed under GINA.

If an employee is seeking leave to care for a family member then obviously the employer will have access to a family member's health information that may be protected under GINA (family history of medical information specifically). This is a limited exception and only applies to an employee's family member, which may include family history information. So in this case, under FMLA; an employer could legally receive information on a family member's medical history information. **Note:** This exception does not apply to the employee's request for his own serious health condition.

GINA makes clear that if a covered entity acquires genetic information in response to a lawful request for medical information, the acquisition of medical information will generally not be considered inadvertent unless the individual directs the employer in writing or verbally not to request genetic information. In other words, the employer needs to state up front that it does not want genetic information on health care certification forms. Otherwise a situation may be created where genetic information under GINA will likely be acquired.

Safe Harbor Language

Employers can include this with the request for information/health care certification forms. This is essentially a disclaimer on any medical information requests that explicitly state employers do not want protected genetic information under GINA.

The EEOC has provided sample safe harbor language as follows that you may choose to utilize in your communications:

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.

Bottom line: When you are asking for medical information under FMLA make sure it falls under a GINA exception and does not violate the law. **Note:** The most recent forms produced for FMLA purposes by the DOL [1] have included compliant safe harbor language for applicable situations addressed by each.

Employer Checklist

- Update FMLA policies to include GINA regulations (include safe harbor language)
- Update FMLA policies to include changes as a result of ADA amendments
- Review your FMLA policies
- Review applicable benefit forms
- Consider changes to payroll system, databases, HRIS system, etc.
- Revise current policies to reflect changes
- Plan a communication strategy; consider newsletter articles, bulletin boards, handbooks, departmental memos, payroll stuffers, etc.
- Consider employees on leave (military, family leave, maternity, workers compensation and other types of leave)
- Consider placing information on company's website (intranet or internet)

- Allow employees to ask questions; often employees do not understand change.
- *All public employers subject to notice requirements*; even if no employees are currently eligible for FMLA.

<http://www.dol.gov/whd/fmla> [2]

Links:

[1] <https://www.dol.gov/whd/fmla/forms.htm>

[2] <http://www.dol.gov/whd/fmla>

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