

## FMLA and GINA

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Dear Reader:

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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,

The University of Tennessee  
Municipal Technical Advisory Service  
1610 University Avenue  
Knoxville, TN 37921-6741  
865-974-0411 phone  
865-974-0423 fax  
[www.mtas.tennessee.edu](https://www.mtas.tennessee.edu)

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## FMLA and GINA

Reference Number:  
MTAS-861

### ***FMLA and GINA (Genetic Information NonDiscrimination Act)***

GINA was signed into law by President Bush in May of 2008 and took effect November 21, 2009.

**Title I** addresses the use of genetic information in health insurance.

**Title II** addresses discrimination in employment based on genetic information.

GINA restricts employers and insurers from acquiring and using genetic information except in limited circumstances.

With respect to employment, GINA makes it illegal to discriminate against employees or applicants because of genetic information. GINA prohibits employers or employment agencies and labor organizations from requesting, requiring, or purchasing genetic information of employees and applicants (as well as their family members).

Specifically it:

- prohibits discrimination and harassment on the basis of genetic information;
- prohibits employers from obtaining genetic information except in narrow circumstances;
- requires employers to keep what they do get confidential; and
- prohibits employers from making any employment-related decisions based on genetic information.

### ***The Link between GINA and FMLA***

When asking for medical information in the course of administering FML (or ADA), there is a potential to obtain information that could be protected by GINA, including genetic information such as: results of genetic tests for cancer genes, hereditary diseases, and other disorders. Results of genetic information on family members can also fall under FMLA/ADA due to GINA. GINA protections include requests for genetic information by an employer about employees or their family members as well as genetic information regarding a fetus or embryo. It also includes the manifestation of a disease or disorder that may pertain to employees or their family members.

The EEOC issued regulations under GINA that define terms and provide guidance for employers administering the act's provisions. They specifically reference certain issues under FMLA. <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/gina> [1]

### ***Inadvertent Acquisition of Genetic Information***

GINA, as originally written, makes the mere acquisition of genetic information on employees and their family members illegal. As a general matter, employers seem to understand this, but with the passage of GINA, employers were worried about facing GINA violations due to inadvertent acquisition of information (i.e., raising money for a family member's condition, or knowledge of an employee or family member's condition via social media or water cooler talk at the office). Employers questioned whether simply receiving the information (inadvertently) would be a violation of GINA. The EEOC offered clarifications [2] to these concerns.

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#### **Links:**

[1] <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/gina>

[2] <http://www.eeoc.gov/laws/regulations/gina-background.cfm>

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