



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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GINA and ADA, FMLA, & Workers' Compensation

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://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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Table of Contents

GINA and ADA, FMLA, & Workers' Compensation	3
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FMLA, ADA and Workers' Compensation commonly intersect with GINA because employers frequently handle medical information in the course of administering FMLA, ADA and Workers' Compensation.

When employers requests medical information in the course of administering ADA and FMLA, 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 are also protected under GINA. GINA protections include requests for genetic information by an employer about an employee or his family member as well as genetic information regarding a fetus or embryo. It also includes the manifestation of a disease or disorder of that may pertain to an employee or his family member. As a general rule when employers specifically ask for pertinent medical information for purposes of FMLA/ADA, the employer is acting in good faith for business and will likely fall under the GINA exception protection provision that will cover them in cases of inadvertent acquisition.

When using ADA/FMLA forms, or requesting medical information, be sure to provide a disclaimer stating you are not soliciting genetic test results from employees or their family members or any information that may not be applicable to the ADA/FMLA/Workers' Compensation statutes. Under FMLA, if an employee is seeking leave to care for a family member an 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 their own serious health condition.

The regulations make it clear that the employer is required to take certain steps to make sure employee medical requests do not seek genetic information.

GINA makes clear that if a covered entity acquires genetic information in response to a lawful request for medical information the acquisition of that medical information will not generally be considered a violation of GINA unless the individual directs the employer in writing or verbally not to request genetic information. In other words, the employer needs to explicitly state that genetic information on health care certification forms is not needed. Otherwise the employer may be creating a situation where it is likely to acquire genetic information under GINA, and this information may not be protected under the inadvertent acquisition clause. Regarding Workers' Compensation, the EEOC states that "genetic information" does not include the fact that an individual has a diagnosed disease, disorder, or pathological condition therefore it is not likely that an employer dealing with workers' compensation injuries would need genetic information to assist in defense of a claim.

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