

Disability Rights Legal Center



Cancer Legal Resource Center

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The CLRC is a joint program of the Disability Rights Legal Center & Loyola Law School

Genetics and Federal Law

What is Genetic Discrimination?

Genetic discrimination refers to social or economic discrimination based on a person's hereditary predisposition to a particular disease.

Why should you be concerned about Genetic Discrimination?

There is a potential for employers and insurance companies to discriminate based on a person's genetic characteristics. Because of the fear that their genetic characteristics may be used against them, some people decide not to disclose information to healthcare professionals and decline early screening and preventative measures which may be crucial for their medical care.

How does federal law protect you from Genetic Discrimination?

HEALTH INSURANCE

- **GINA (Genetic Information Nondiscrimination Act of 2008)**

- Prohibits group health plans from restricting enrollment and adjusting premiums for health insurance on the basis of genetic information. However, the group health insurer can increase premium if an individual has symptoms associated with the genetic condition.
 - A group health plan cannot request or require an individual or family member of an individual from undergoing a genetic test.
 - A group health insurer cannot request, require, or purchase genetic information for (1) underwriting purposes or (2) with respect to any individual prior to their enrollment. However, it is not a violation if the group health insurer incidentally obtains the genetic information.
 - This law applies to all group health plans including small group health plans.
- Prohibits individual health insurers from restricting enrollment and adjusting premiums for health insurance on the basis of genetic information. However, an individual health insurer can increase premium if the genetic predisposition is manifested.
 - A health insurer offering health insurance coverage in the individual market cannot establish eligibility rules for enrollment based on genetic information.
 - A health insurer cannot request, require, or purchase genetic information for (1) underwriting purposes or (2) with respect to any individual prior to their enrollment. However, GINA provides that if the health insurer incidentally obtains genetic information, then that is not a violation.
 - Prohibits individual health plans from imposing a pre-existing condition exclusion on the basis of genetic information.
 - These requirements apply to all nonfederal governmental plans. (Not Medicaid and Medicare)

- Requires employers that possess such genetic information about an employee to treat such information as confidential and prohibits the employer from disclosing the genetic information except:
 1. to the employee or member upon request;
 2. to an occupational or other health researcher;
 3. in response to a court order;
 4. to a government official investigating compliance with this Act;
 5. in connection with the employee's compliance with the certification provisions of family and medical leave laws; or
 6. to a public health agency.

Genetics and State Law

How does California law protect you from Genetic Discrimination?

HEALTH INSURANCE

- **CA Health and Safety Code §1374.7 and CA Insurance Codes §742.405, §10123.3**
 - Prohibit a health plan from denying coverage to anyone on the basis of a person's genetic characteristics. A plan may not charge a higher rate or provide different terms, conditions, or benefits on the basis of a person's genetic characteristics.
- **CA Civil Code §56.17 and CA Insurance Code §742.407**
 - Prohibit a health plan from disclosing genetic test results in a manner that identifies the person to whom the results apply to a third party without written authorization.
- These codes define genetic characteristics as “an identifiable gene or chromosome that is known to cause a disease or disorder in a person or their offspring, or that is determined to be associated with a statistically increased risk or development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.”

LIFE AND DISABILITY INSURANCE

- **CA Insurance Codes §10140, §10143**
 - Prohibit life or disability insurance companies that are licensed in California from refusing to issue, sell or renew, or charge a higher premium or rate on any policy of life or disability insurance solely because the person to be insured carries a gene which may under some circumstances be associated with a disability in that person or that person's offspring but which causes no adverse affects on the carrier.
- **CA Insurance Codes §10148, §10149**
 - Prohibit life or disability insurance companies from requiring genetic tests to determine eligibility.
- **CA Insurance Code §10140.1**
 - Prohibits life or disability insurance companies that are licensed in California from disclosing genetic test results in a manner that identifies the person to whom the results apply to a third party without written authorization.

EMPLOYMENT

- **Fair Employment and Housing Act [FEHA]**
 - CA Gov Code §12940 and §12926 prohibit discrimination based on a person's race, religion, creed, color status, sex, age, medical condition.
 - Definition of “medical condition” was expanded to included genetic characteristics.

Where can I get additional information?

If you have questions about genetics and employment protections in your state, contact the California Department of Fair Employment and Housing at (800) 884-1684. If you have questions about genetics and insurance protections in your state, contact the California Department of Insurance at (800) 927-4357.

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