



Stowe Associates
Employee Benefits and HR Compliance

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DECEMBER 2009

During this current economic downturn and resulting budget cuts many employers are having difficulty funding all of the human resource functions of their business. **Stowe Associates** provides many compliance assistance services at **no cost**. We can help you. One of our highly trained representatives will be glad to discuss how your company can stretch its budget dollars by taking advantage of these services. To learn more, please contact Josh Dunn at (770) 451-6222 ext. 5202 or jdunn@stoweassociates.com.



WORKSHOP ANNOUNCEMENT

DATE: February 18, 2010
TOPICS: Employee Manual
Section 125
USERRA
Sexual Harassment
TIMES: 9:00 a.m.—4:30 p.m.
There will be a morning and after-noon session. More details on times will be included in the invitation
LOCATION: Cobb Galleria Centre

The Workshop Invitation will be sent out in the next few days. Registration information will be included in the invitation.

**Historic Genetic Information
Nondiscrimination Act
Takes Effect**

EEOC Assumes New Area of Jurisdiction to Protect Confidentiality of Genetic Information

WASHINGTON -- In the first legislative expansion of its jurisdiction since passage of the Americans with Disabilities Act (ADA) in 1990, the U.S. Equal Employment Opportunity Commission (EEOC) on Saturday, November 21, 2009, assumed responsibility for enforcing Title II of the Genetic Information Nondiscrimination Act (GINA). The new rules apply for plan years beginning on or after December 7, 2009, meaning calendar- year plans must comply by January 1, 2010.

GINA prohibits discrimination by health insurers and employers based on individuals' genetic information. Genetic information includes the results of genetic tests to determine whether someone is at increased risk of acquiring a condition (such as some forms of breast cancer) in the future, as well as an individual's family medical history."

GINA affirms the principle central to all employment discrimination laws – that all people have the right to be judged according to their ability to do a job, not on stereotypical assumptions," said Acting EEOC Chair Stuart J. Ishimaru. "No one should be denied a job or the right to be treated fairly in the workplace based on fears that he or she may develop some condition in the future."



**Earn HR Credit
Hours for Each
Session Attended!**

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Specifically, the law prohibits the use of genetic information in making employment decisions, restricts the acquisition of genetic information by employers and others, imposes strict confidentiality requirements, and prohibits retaliation against individuals who oppose actions made unlawful by GINA or who participate in proceedings to vindicate rights under the law or aid others in doing so. The same remedies, including compensatory and punitive damages, are available under Title II of GINA as are available under Title VII of the Civil Rights Act and the ADA.

Although the rules could affect group health plans in many ways, their impact on the Health Risk Assessments (HRAs) in plans' wellness programs is of particular concern.

Under the rules, family medical history may not be requested as part of an HRA anytime prior to the effective date of coverage in the health plan. Once coverage is effective, family medical history may be requested; however, it may not be used for "underwriting", which is defined broadly to include any reward, rebate or "payment in kind" in exchange for completing the HRA.

Most plan sponsors will have to change the HRAs they use so they exclude questions about family members' medical history, as well as any questions that they reasonably anticipate will result in the provision of genetic information.

The EEOC is responsible for enforcing federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov.

Defense Authorization Act Expands FMLA Rights For Relatives Of Veterans And Members Of The Armed Forces

On October 28, 2009, President Obama signed the *National Defense Authorization Act for Fiscal Year 2010* (the "NDAA"), which, among other things, expands the scope of the provisions of the Family and Medical Leave Act ("FMLA") pertaining to leave for qualifying exigencies and military caregiver leave. Specifically, the NDAA now permits family members of active duty service members to take leave for a qualifying exigency. Previously, only family members of National Guard and Reservists called to active duty in support of a contingency operation were permitted to take leave for a qualifying exigency. The NDAA also extends the scope of military caregiver leave to families of certain veterans, who previously were not covered by the provision. It also permits military caregiver leave for serious injuries or illnesses that are the result of pre-existing conditions that were aggravated by service while on active duty.

Under the new provisions:

Covered active duty is both of the following:

- In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country.
- In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty.

A **covered service member** is both of the following:

- A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

A **veteran** is a person who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable.

A **serious injury or illness** is both of the following:

- In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
- In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves), at any time during the period of 5 years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, has a qualifying injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Final Rule on USERRA Benefits Under Title IV.

On November 17, 2009, PBGC published in the Federal Register a [final rule](#) that amends PBGC's benefit payments regulation to implement provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA provides that an individual who leaves a job to serve in the uniformed services is generally entitled to reemployment by the previous employer and, upon reemployment, to receive credit for benefits, including employee pension plan benefits, that would have accrued but for the employee's absence due to the military service.

Under PBGC's current benefit payments regulation, a benefit is guaranteed only if the participant satisfies the conditions for entitlement to the benefit on or before the plan's termination date. The final rule provides that so long as a service member is reemployed within the time limits set by USERRA, even if the reemployment occurs after the plan's termination date, PBGC will treat the service member as having satisfied the reemployment condition as of the termination date. This will ensure that the pension benefits of reemployed service members, like those of other employees, will generally be guaranteed for periods up to the plan's termination date.

The final rule will be effective December 17, 2009. The change will apply to reemployments under USERRA initiated on or after December 12, 1994. Once the final rule is effective, PBGC will begin adjusting final benefit determinations of affected participants and make back payments with interest. (11/17/09)

If you have questions or need assistance, please contact jdunn@stoweassociates.com.

If you would like to unsubscribe to future communications please fax this completed form back to 770-936-2638 or send an e-mail to jdunn@stoweassociates.com.

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