



HR CORNER

FEES & BURGESS, P. C.



Volume 5, Issue 3

March 2009

EEOC Issued Proposed Rule for Genetic Information Nondiscrimination Act

Fees & Burgess, P.C., Emphasizes:

The Genetic Information Nondiscrimination Act (GINA) was signed into law by President Bush on May 2, 2008. The Act required that the Equal Employment Opportunity Commission (EEOC) issue regulations to implement GINA within one year. In accordance with this requirement, the EEOC has published proposed regulations for public review and comment. Generally, GINA prohibits employers from requesting genetic information from employees, prohibits the use of such information in making employment decisions, and requires employers to keep this information confidential.

There are exceptions when employers inadvertently request or receive such genetic information. The EEOC's proposed regulations clarify this exception and provide additional examples when the exception applies:

- 1) When a member of management overhears genetic information communicated between the employee and others;
- 2) When a member of management receives unsolicited genetic information;
- 3) When the employee provides the information in regard to a request for a reasonable accommodation (so long as the employer did not request any genetic information, including family medical history);
- 4) When the employer requests non-genetic medical information and the employee provides genetic information;
- 5) When the employee provides genetic information to support a request for leave not required by federal, state, or local laws; or
- 6) When the employer learns of genetic information in response to a generalized request about the employee's health or the health of the employee's family (i.e., "How is your daughter feeling?").

General Civil Litigation

Commercial Law & Litigation

Municipal Law & Litigation

Police Civil Liability Defense

Employment Law & Litigation

Construction Litigation

Corporate Law & Government Contracting

Insurance Defense

Railroad Law

EEOC Issued Proposed Rule for Genetic Information Nondiscrimination Act*-continued from page 1*

Note that despite these exceptions, employers should be careful to avoid impermissible requests under GINA. While the Americans with Disabilities Act permits post-offer medical examinations and medical inquiries with regard to whether an employee can perform the functions of the job, GINA prohibits employer requests related to genetic information in this process, including requests related to family medical history. In addition, any inadvertently obtained genetic information must be kept in a separate medical file for confidentiality purposes. Such information may not be used to make employment decisions, no matter the source of the information.

GINA applies to all employers with 15 or more employees. The same enforcement mechanisms and remedies that apply to Title VII claims will apply to GINA. As such, employers should pay particular attention to these new proposed regulations and the finalized regulations to be published later this year. Public comments are due on or before May 1, 2009.





Fees & Burgess, P.C.—Calendar of Events

Fees & Burgess, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars:

March 12, 2009 – National Contract Management Association Audio Seminar Series
[*Contracting under the UCC, CISG, UNIDROIT, and Other Laws or Rules*](#)

March 16, 2009—Huntsville, Alabama
[*Conducting Effective Investigations in the Workplace*](#), presented to the ASIS International, North Alabama.

March 18, 2009—Albertville, Alabama
[*New Regulation Updates to Family and Medical Leave Act of 1993*](#), presented to the Society for Human Resource Management of Marshall County, Alabama. This program will discuss the highlights of the most important changes in the regulations and the law.

March 19, 2009—Huntsville, Alabama
[*Indemnities and Limitation of Liability Provisions in Commercial Contracts*](#), presented to the NAPM, North Alabama.

March 25, 2009—Huntsville, Alabama
[*SHOW ME THE MONEY! A Recession-Era Guide to "Getting Paid" on Construction Projects!*](#) Presented to the North Alabama Chapter of Associated Builders & Contractors.

March 30, 2009 – Las Vegas, Nevada
[*Legal Issues in the EMS Industry*](#) for IPC EMS Management Council Meeting in conjunction with IPC APEX EXPO 2009.

April 4, 2009 – Las Vegas, Nevada
[*Contract Management and Business Arrangements: Risk Allocation in Critical Areas of the Contract*](#), presented as part of *EMS Training II: Part C of the IPC EMS program Manager Training and Certification Program*.

April 6-7, 2009—Long Beach, California —2009 NCMA World Congress
[*Contracting under the UCC: A Basic Primer to Articles 1, 2, and 2A*](#). Certification study sessions for Certified Commercial Contracts Manager (CCCM) Fast Track program in conjunction with 2009 NCMA World Congress.

April 22, 2009—Huntsville, AL
[*Enhanced Liabilities for Employers in 2009 and How to Minimize Reduction in Force Risk*](#). Sponsored by Fees & Burgess, P.C.

April 29, 2009—Huntsville, AL
[*Indemnity and Limitation of Liability Clauses*](#). Sponsored by Fees & Burgess, P.C.

For more information on these and other seminars, please go to <http://www.feesburgess.com/category/events-seminars/> or contact Donna Stoddart at dstoddart@feesburgess.com.



FEES & BURGESS, P.C.

SEMINAR SERIES



Enhanced Liabilities for Employers in 2009 and How to Continue to Minimize Reduction in Force Risk

This program will focus on issues associated with downsizing and reductions in force, including:

- planning /employee selection /related documentation
- severance policies
- use of enforceable releases
- WARN Act / FOREWARN Act proposals
- recovering and protecting company information/property
- security issues
- implementation with dignity
- what claims cannot be waived
- potential new claims under Ledbetter Fair Pay Act and other new legislation

DOWNSIZE

April 22, 2009

8:00 a.m.—9:30 a.m.

Registration begins at 7:30 a.m.

\$15.00 per person.

Continental breakfast is included.

Location:

Holiday Inn-Research Park
5903 University Drive
Huntsville, Alabama 35806
(In front of Madison Square Mall)

Presenters are Jeffrey L. Roth and Leah M. Green

This course is pending approval for 1.5 HRCI continuing education credit hours

Enhanced Liabilities for Employers in 2009 and How to Continue to Minimize Reduction in Force Risk

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Time: 8:00 a.m.—9:30 a.m.*

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Name: _____ Title: _____

Company: _____ E-mail: _____

Name: _____ Title: _____

Company: _____ E-mail: _____

Name: _____ Title: _____

Company: _____ E-mail: _____

Check enclosed

Will pay at the door

Please make checks payable to Fees & Burgess, P.C.

Send your registration form and payment to the attention of Donna Stoddart at:

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Email: dstoddart@feesburgess.com

“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”

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SPEAKERS

Fees & Burgess, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program contact Julia Fees at jfees@feesburgess.com.

NEWSLETTERS

Fees & Burgess, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these e-newsletters, please e-mail Donna Stoddart at dstoddart@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail dstoddart@feesburgess.com.

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HR Corner should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only. Anyone needing specific legal advice should consult an attorney.

“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”