

BUSINESS

07.15.08



Assisted-living facility is geared toward affordability.

2



DOW

45.35 Close: 11,055.19

S&P 500

11.19 Close: 1,228.30

N

26.2

ASK A LAWYER

New law limits use of genetic data

Q. What is the meaning of the recently passed Genetic Information Non-discrimination Act?

On May 21, President Bush signed the Genetic Information Non-discrimination Act (GINA) into law. GINA prohibits employers, employment agencies, labor unions and health insurers from discriminating against employees and insureds based on their genetic information or predisposition for certain diseases.

In the employment context, the act prohibits employers from considering a person's genetic status when making any employment decisions. The act also prohibits employers from collecting or disclosing employees' genetic information. Finally, GINA requires employers, unions and employment agencies that obtain genetic information to treat the information as confidential, as is also required by the Americans With Disabilities Act.

New Jersey's Genetic Privacy Act, an amendment to the law against discrimination, has since 1996 prohibited bias on the basis of an employee's or applicant's genetic information or because of a refusal to submit to a genetic test or make the results of such test available.

As does Title VII of the Civil Rights Act of 1964 ("Title VII"), which prohibits discrimination on the basis of an employee's or applicant's race, color, religion,

sex or national origin, GINA requires employees or applicants who believe they have a claim for discrimination under the act to first obtain a "Right to Sue" letter from the Equal Employment Opportunity Commission (EEOC) before filing a lawsuit in federal court.

Once a Right to Sue letter is obtained, an employee or applicant may proceed in court and seek compensatory and punitive damages, equitable relief and attorneys' fees. Unlike Title VII, which also prohibits neutral policies that have a discriminatory impact on employees or applicants, GINA only prohibits intentional discrimination on the basis of a person's genetic information. While GINA takes effect in November 2009, the federal EEOC is to propose certain interpretive regulations within the next year.

Randi Kochman is a member of the employment law department of Cole, Schotz, Meisel, Forman & Leonard PA, the largest law firm in Bergen County. She can be reached at rkochman@coleschotz.com, or 201-525-6309. This is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.

Do you have a business question for a lawyer? Send it to BusinessNews@northjersey.com.