

EEOC SETTLES ITS FIRST SYSTEMIC GINA CLASS ACTION SUIT

The EEOC's first systemic lawsuit brought under the Genetic Information Nondiscrimination Act ("GINA") has resulted in a defendant nursing and rehabilitation center agreeing to settle for \$370,000 and other penalties as explained below. Employers will recall that GINA prohibits employers from discriminating and retaliating against employees or job applicants based on genetic information and restricts employers from requesting or obtaining genetic information. A more detailed discussion of employers' obligations under GINA and its requirements can be found in our [prior article](#).

THE EEOC'S ALLEGATIONS

The EEOC alleged that Founders Pavilion, Inc. ("Founders"), a nursing home and rehabilitation facility in New York, unlawfully required a class of applicants and employees to provide genetic information (in violation of GINA) in response to questions about family medical history as part of its pre-employment, return-to-work and annual medical examinations. The EEOC also alleged that Founders violated the ADA by terminating two individuals it regarded as disabled and violated Title VII by discriminating against three other individuals based on pregnancy.

THE CONSENT DECREE

The parties, relatively early in the litigation, agreed to settle all claims and entered into a consent decree. The consent decree requires Founders to pay and distribute a total of \$110,400 to the 138 class members of the GINA class action. This calculation provides \$800 to each individual that was hired by Founders during the time that they allegedly utilized a form seeking "Family History" information. The consent decree also requires Founders to pay \$259,600, divided in various amounts, to the five identified individuals that were affected by Founders violations of GINA, the ADA and Title VII.

Interestingly, after the complaint was filed in this case, Founders sold the nursing and rehabilitation center at issue and has ceased operating any business. Doing business as Pavilion Operations, LLC, Corning Center for Rehabilitation and Healthcare, the purchasing entity, agreed to revise its anti-discrimination policies and conduct anti-discrimination training as a non-signatory to the consent decree. Founders agreed that, if it ever again owns or operates any health care facility or other business, it will (1) post "in all prominent places" a "Notice of Resolution regarding this lawsuit"; (2) provide notice and a memo regarding the requirements of federal anti-discrimination laws to all employees; (3) adopt anti-discrimination policies and procedures; (4) provide anti-discrimination training; (5) refrain from requesting genetic information from applicants and employees; (6) refrain from violating any other federal anti-discrimination laws; and (7) permit the EEOC access to its records for voluntary inspection.

LESSONS FOR EMPLOYERS

David Lopez, EEOC General Counsel, commented that "Employers need to be aware that GINA prohibits requesting family medical history. When illegal questions are required as part of the hiring process, the EEOC will be vigilant in ensuring that no one is denied employment opportunities on a prohibited basis." Employers must pay special attention to potential GINA violations as this case makes clear, as unsuspecting GINA violations can result in substantial monetary fines and penalties for employers. Employers should abandon all requests for employees and applicants to provide family medical histories or other genetic information in connection with pre-employment, return-to-work and annual medical examinations. For a review of employers' best practices for complying with GINA, please consult our [prior article](#).

Reference: *EEOC v. Founders Pavilion, Inc.*, 13-CV-06250 (W.D.N.Y. January 9, 2014).

If you have any questions, please contact Larry Jensen at ljensen@hallrender.com, Brad Taormina at btaormina@hallrender.com or your regular Hall Render attorney.