

University of Central Florida
Equal Opportunity and Affirmative Action Programs
Discrimination: Descriptions, Prevention
DISCRIMINATION BASED ON GENETIC INFORMATION

The University of Central Florida promotes access to its employment opportunities consistent with federal statute. The University takes prompt action to investigate complaints of discrimination based on genetic information when received from external sources.

Genetic information discrimination involves treating people unfavorably based on results of their genetic tests or the test of family members. Think of this law in terms of “family medical history.”

An individual might take an adverse action against someone based on an inaccurate perception of genetic information or family medical history: it is still discrimination based on genetic information. For example, if an individual makes an unfounded assumption about genetic information because of their support of a group, an adverse action on that basis still is discrimination based on genetic information.

Just as with other protected classes, complaints still may be valid when an individual with the same genetic background or family history practices discrimination on that basis. “Sharing the same protected class” is not a valid defense to the conduct.

That conduct includes decisions to hire, terminate, set a particular salary, assign certain tasks, promote, lay off, train, or any other term or condition of employment. Common examples of genetic information discrimination include:

- Basing employment decisions on an individual’s participation in clinical research related to genetic information
- Basing employment decisions on family medical history related to genetics, such as predicting that an individual has an increased risk of getting a disease, disorder, or condition in the future
- Seeking genetic information about an applicant or employee, except:
 - Inadvertent acquisitions of information. This is known as the “water cooler exception” – a manager hears someone talking about a family member’s illness
 - Voluntary identifications of information, such as for a wellness program
 - Application for leave under the Family and Medical Act

The exceptions only apply to escaping the penalties for seeking genetic information. The penalties remain for any employer who uses genetic information to discriminate.

The best systems for employment decisions consider job-related factors such as qualifications, experience, education, interview success, reference-check results, performance in current and previous positions, potential for success in higher-level or reorganized positions, abilities, and interest. UCF incorporates those factors into employment selection decisions (as an example), using the Faculty Hiring Guide, A&P

Hiring Guide, Search and Screen Guidelines, pre- and post-hire monitoring of rationale, and training programs for hiring officials, search committee members, and interviewers.

Harassment based on genetic information is more of a pattern than specific acts of discrimination. It may take the form of “joking around” or “teasing.” If it substantially interferes with an employee’s performance, it is unlawful.

The following example may contain offensive material because it is provided as an example of a hostile or offensive environment.

Perhaps the “jokes” can be stopped by the target early in the pattern because it is a miscommunication about what is funny. If colleagues know the employee was caring for a parent diagnosed with Alzheimer’s disease, they may believe the condition is genetic and the employee has an increased risk of the same diagnosis. When harassment by joking begins, the employee may be able to tell the individual, “Nicknaming me ‘our early Alzheimer’s candidate’ is getting old. Why don’t we go back to when I was still Soon Li.” If the pattern stops, there is no basis for a harassment claim.

If the nicknaming based on genetic information continues, and colleagues join in despite requests to stop, and joke-store “memory pills” are left on the individual’s desk, and her colleagues ask if she remembers what they talked about at staff meeting yesterday: the individual is responsible for reporting this pattern of harassment related to genetic information and the University is responsible for addressing it. It is unlawful when it is so severe or frequent that it creates a hostile or offensive working environment.

The federal statute GINA prohibits acts of retaliation, as well as harassment, within its definition of discrimination. Retaliation consists of an adverse action, taken against an individual who complained or threatened to complain or who served as a witness in a discrimination complaint, based on that individual’s involvement.

For information on GINA, see the following resources:

- **U.S. Equal Employment Opportunity Commission**, Genetic Information Discrimination: <http://www.eeoc.gov/laws/types/genetic.cfm>
- **Code of Federal Regulations**, Genetic Information Nondiscrimination Act of 2008: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/xml/CFR-2011-title29-vol4-part1635.xml>

For additional questions and resources for filing a report, complaint, or discrimination grievance, utilize the following contact information:

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Orlando, FL 32816-0030
(407) UCF-1EEO (823-1336)

<http://www.eeo.ucf.edu/>

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