

**University of Central Florida
Office of Institutional Equity**

***GUIDELINES FOR COMPLIANCE WITH THE GENETIC INFORMATION
NONDISCRIMINATION ACT (GINA)
&
NONDISCRIMINATION BASED ON GENETIC INFORMATION***

The University of Central Florida promotes access to its employment opportunities consistent with state and federal law. The University also takes prompt action to investigate complaints of discrimination, including those alleging discrimination based on genetic information.

The purpose of GINA is to: (a) prohibit the use of genetic information in employment decision making; (b) restrict employers from requesting, requiring or purchasing genetic information; and (c) require that genetic information be maintained as a confidential medical record, and place strict limits on disclosure of genetic information.

Discrimination

Genetic information discrimination involves subjecting an individual to an adverse action based on the results of their genetic tests or the tests of family members. An adverse action 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;

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, and 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.

It is important to note that 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. Also, 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.

Discriminatory Harassment

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 the conduct is severe or pervasive that it substantially interferes with an employee’s performance (hostile work environment), it is unlawful and prohibited by the University.

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 likely 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 the staff meeting yesterday: the individual should report this behavior to the Office of Institutional Equity.

Requests for Medical Information

An employer may not request, require, or purchase genetic information of an individual or family member of the individual. This prohibition does not apply where an employer inadvertently requests or requires genetic information of the individual or family member of the individual. If any employer acquires genetic information in response to a lawful request for medical information, such as under the FMLA and ADA procedures, the acquisition will generally not be considered inadvertent unless the employer directs the individual and/or health care provider not to provide genetic information. Receipt of any genetic information in response to the request for medical information will be deemed inadvertent if the following language is used:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the

individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

UCF has modified its FMLA, ADA and Worker's Compensation forms to include this required language. It should be added to any similar correspondence requesting medical information from employees or their families.

Confidentiality

Genetic information in writing about an employee or an employee's family must be maintained in medical files (including where the information exists in electronic forms and files) that are separate from personnel files and treated as a confidential medical record.

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 or complaint, utilize the following contact information:

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