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## 29 C.F.R. § 1635.8

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### Acquisition of genetic information.

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(a) *General prohibition.* A covered entity may not request, require, or purchase genetic information of an individual or family member of the individual, except as specifically provided in paragraph (b) of this section. “Request” includes conducting an Internet search on an individual in a way that is likely to result in a covered entity obtaining genetic information; actively listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and making requests for information about an individual's current health status in a way that is likely to result in a covered entity obtaining genetic information.

(b) *Exceptions.* The general prohibition against requesting, requiring, or purchasing genetic information does not apply:

(1) Where a covered entity inadvertently requests or requires genetic information of the individual or family member of the individual.

(i) Requests for Medical Information:

(A) If a covered entity acquires genetic information in response to a lawful request for medical information, the acquisition of genetic information will not generally be considered inadvertent unless the covered entity directs the individual and/or health care provider from whom it requested medical information (in writing, or verbally, where the covered entity does not typically make requests for medical information in writing) not to provide genetic information.

(B) If a covered entity uses language such as the following, any receipt of genetic information in response to the request for medical information will be deemed inadvertent: “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.”

(C) A covered entity's failure to give such a notice or to use this or similar language will not prevent it from establishing that a particular receipt of genetic information was inadvertent if its request for medical information was not “likely to result in a covered entity obtaining genetic information” (for example, where an overly broad response is received in response to a tailored request for medical information).

(D) Situations to which the requirements of subsection (b)(1)(i) apply include, but are not limited to the

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following:

(1) Where a covered entity requests documentation to support a request for reasonable accommodation under Federal, State, or local law, as long as the covered entity's request for such documentation is lawful. A request for documentation supporting a request for reasonable accommodation is lawful only when the disability and/or the need for accommodation is not obvious; the documentation is no more than is sufficient to establish that an individual has a disability and needs a reasonable accommodation; and the documentation relates only to the impairment that the individual claims to be a disability that requires reasonable accommodation;

(2) Where an employer requests medical information from an individual as required, authorized, or permitted by Federal, State, or local law, such as where an employee requests leave under the Family and Medical Leave Act (FMLA) to attend to the employee's own serious health condition or where an employee complies with the FMLA's employee return to work certification requirements; or

(3) Where a covered entity requests documentation to support a request for leave that is not governed by Federal, State, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the Americans with Disabilities Act and other laws limiting a covered entity's access to medical information.

(ii) The exception for inadvertent acquisition of genetic information also applies in, but is not necessarily limited to, situations where—

(A) A manager, supervisor, union representative, or employment agency representative learns genetic information about an individual by overhearing a conversation between the individual and others;

(B) A manager, supervisor, union representative, or employment agency representative learns genetic information about an individual by receiving it from the individual or third-parties during a casual conversation, including in response to an ordinary expression of concern that is the subject of the conversation. For example, the exception applies when the covered entity, acting through a supervisor or other official, receives family medical history directly from an individual following a general health inquiry (e.g., “How are you?” or “Did they catch it early?” asked of an employee who was just diagnosed with cancer) or a question as to whether the individual has a manifested condition. Similarly, a casual question between colleagues, or between a supervisor and subordinate, concerning the general well-being of a parent or child would not violate GINA (e.g., “How's your son feeling today?”, “Did they catch it early?” asked of an employee whose family member was just diagnosed with cancer, or “Will your daughter be OK?”). However, this exception does not apply where an employer follows up a question concerning a family member's general health with questions that are probing in nature, such as whether other family members have the condition, or whether the individual has been tested for the condition, because the covered entity should know that these questions are likely to result in the acquisition of genetic information;

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