

# Genetic Information Nondiscrimination Act: Title II (Employment).

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**GENETIC INFORMATION  
NONDISCRIMINATION ACT  
Title II (EMPLOYMENT)**

**NPRM COMMENTS**

## PREAMBLE:

NPRM: “Title II restricts **deliberate** acquisition of information”

COMMENT: GINA addresses intentional acts but does not  
require  
specific intent to acquire genetic information.

## General Rule on Prohibited Practices:

**GINA prohibits employment discrimination based on the genetic information of the employee.**

Applies equally to employers, employment agencies , labor organizations and joint labor-management committees controlling job training

Discrimination includes: “ fail or refuse to hire...discharge.. or otherwise discriminate...with respect to the compensations, terms, conditions, or privileges of employment.”

**NPRM is consistent with GINA language**

## **General Rule on Acquisition of Information**

**GINA makes it an unlawful employment practice for an employer to:**

“Request, require or purchase genetic information with respect to an employee or family member of an employee”

**NPRM is consistent with GINA language**

## Exceptions to the prohibition on acquisition of genetic information:

1. Inadvertently request
2. Health or genetic services
3. Genetic monitoring of the biological effects of toxic substances
4. Federal or state FMLA compliance
5. Commercially and publicly available records
6. Law enforcement

**These exceptions must be more carefully crafted in the NPRM**

## Generally:

3.Modification of medical inquiries

5.Specific examples

## Inadvertent acquisition:

1. Congressional intent to limit this exception
2. Exception should not apply to:
  - Situations where employer knows or should know genetic information will be acquired such as probing questions and reasonable accommodation requests
  - Modification of current employer practice required



## Health or genetic services:

The voluntary requirement must be defined to prohibit:

1. “Incentive” based wellness programs
2. Wellness programs that **require** a health risk assessment.

## Commercially and publicly available information:

Electronic media should generally be included in exception  
**BUT**

1. The use of a public v. private framework is inappropriate
2. This exception is **NOT** meant to apply to mediums at heightened risk for containing private genetic information

## Genetic monitoring:

3. GINA does not employ the ADA “job related” standard for disability inquiries.
5. The NPRM must offer guidance on what proper steps, if any, can be taken when an employee fails to give consent for testing.
7. THE NPRM should make clear that GINA does not in any way limit responsibility for maintaining the safety and health of the workplace.



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# Law Enforcement or Human Remains Quality Control Purposes:



## Firewall:

- 3) We agree with the NPRM that employers are not immune for violations of Title II simply because the decisions are based on health benefits.
  
- 5) The NPRM should make clear that an employer who causes a third party covered under Title I to engage in an act that violates an individual's employment should be governed by the protections in Title II.



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# The Genetic Information Nondiscrimination Act

“The first civil rights bill of the new century”

-Senator Edward Kennedy

