- places strict limits on the disclosure of genetic information; and
- specifically prohibits employers from discriminating against any employee with respect to the "compensation, terms, conditions, or privileges of employment" on the basis of "genetic information."[63]

In order to understand the scope and application of these prohibitions, it is important to understand the definitions that are used in GINA Title II.

2. Key Terminology Under GINA Title II

While GINA Title II uses many terms that are also used in Title I, the definitions used by the two titles are not always identical. For example, the definition of a genetic test in Title II is slightly different from the definition used in Title I.[64] Differences in interpretation may also arise because the EEOC has regulatory authority over Title II, while the requirements under Title I are administered by the Departments of Health and Human Services, Labor, and the Treasury. Employers and health plans should be careful to consider all applicable guidance when analyzing their obligations under Title I and Title II of GINA. For more information about Title I of GINA, see subsection C; see also *HIPAA Portability, Privacy & Security* (Thomson Reuters/Tax & Accounting, 1997-present, updated quarterly).

Relationship to Definitions Used in Other Employment Nondiscrimination Statutes. The EEOC has acknowledged that many of the definitions used in GINA Title II are not commonly used in other employment nondiscrimination laws and are "outside the areas of its expertise" (e.g., terms used in the definition of "genetic test," including "human DNA, RNA, chromosomes, proteins, or metabolites").*

* *See* Preamble to Final Regulations, 75 Fed. Reg. 68911, 68913 (Nov. 9, 2010).

a. Genetic Information

Under GINA's employment nondiscrimination requirements, genetic information is defined as information about an individual's genetic tests, information about the genetic tests of an individual's family members, or information about the manifestation of a disease or disorder in an individual's family members.[65] Genetic information includes any request for, or receipt of, genetic services (including genetic testing, counseling, or education), or participation in clinical research which includes such services, by the individual or family member.[66] Note that the statutory definition of genetic information in GINA Title II is the same as in Title I.[67]

Genetic information also includes genetic information of any fetus carried by an individual or by a pregnant woman who is a family member, as well as genetic information of any embryo legally held by an individual or family member who is utilizing assisted reproductive technology.[68] Genetic information does not, however, include information about the sex or age of any individual, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.[69]

63 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233 (2008), 42 U.S.C. § 2000ff.

64 *See* Preamble to Regulations Under the Genetic Information Nondiscrimination Act of 2008, 75 Fed. Reg. 68912, 68917 (Nov. 9, 2010).

65 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 201(4)(A) (2008), 42 U.S.C. § 2000ff; EEOC Reg. § 1635.3(c).

66 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, §§ 201(4)(B) and 201(6) (2008), 42 U.S.C. § 2000ff; EEOC Reg. § 1635.3(c)(1)(iv).

67 Compare 42 U.S.C. §§ 2000ff(3) and (4) with the Title I definitions of family member at Code § 9832(d)(6); ERISA § 733(d)(5); and PHSA § 2791(d)(15); and the Title I definitions of genetic information at Code § 9832(d)(7); ERISA § 733(d)(6); and PHSA § 2791(d)(16).

68 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 209(b) (2008), 42 U.S.C. § 2000ff-8; EEOC Reg. § 1635.3(c)(1)(v).

69 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 201(4)(C) (2008), 42 U.S.C. § 2000ff; EEOC Reg. § 1635.3(c)(2).

b. Genetic Tests and Genetic Monitoring

A genetic test is defined as "an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes."[70] The final regulations contain many examples of tests that fall within this definition, including tests for genetic variants evidencing a predisposition to breast cancer or associated with certain hereditary diseases, carrier screenings to determine an adult's risk for conditions such as cystic fibrosis or sickle cell anemia, and amniocentesis.[71] Also included in the regulations are examples of tests or procedures that are not genetic tests, among which are complete blood counts, cholesterol tests, liver-function tests, and alcohol and drug tests.[72]

Genetic monitoring refers to the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed during employment due to exposure to toxic substances in the workplace. The purpose of the monitoring must be to identify and control adverse environmental exposures in the workplace.[73]

c. Employee

Employee is defined by reference to Title VII of the Civil Rights Act of 1964.[74] The term employee includes an applicant for employment, as well as current and former employees.[75]

d. Family Members

A family member of an individual is defined as someone who is a first-degree, second-degree, third-degree, or fourth-degree relative of that individual (including some half-siblings) or someone who is a dependent of that individual. A dependent for this purpose means someone who is a dependent as the result of marriage, birth, adoption, or placement for adoption.[76] The statutory definition of family member is the same in GINA Title II as in Title I.[77]

3. GINA Title II Prohibitions and Limitations

a. Prohibition on Employer Discrimination Based on Genetic Information

GINA's employment nondiscrimination requirements prohibit employers from discriminating against any employee with respect to hiring, discharge, compensation, terms, conditions, or privileges of employment on the basis of genetic information with respect to the employee.[78] Employers that sponsor group health plans (including self-insured group health plans) must comply with Title II of GINA when operating as employers, while their plans must comply with Title I of GINA, noting that health benefits are within the definition of "compensation, terms, conditions, or privileges of employment" under GINA Title II.[79]

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70 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 201(7) (2008), 42 U.S.C. § 2000ff; EEOC Reg. § 1635.3(f).

71 EEOC Reg. § 1635.3(f)(2).

72 EEOC Reg. § 1635.3(f)(3).

73 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 201(2)(A) (2008), 42 U.S.C. § 2000ff; EEOC Reg. § 1635.3(d).

74 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 201(2)(A) (2008).

75 EEOC Reg. § 1635.2(c).

76 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 201(3) (2008), 42 U.S.C. § 2000ff; EEOC Reg. § 1635.3(a). The definition of dependent for this purpose is the same as applies for purposes of the HIPAA special enrollment provisions found in ERISA § 701(f)(2).

77 Compare 42 U.S.C. §§ 2000ff(3) and (4) with the Title I definitions of family member at Code § 9832(d)(6); ERISA § 733(d)(5); and PHSA § 2791(d)(15); and the Title I definitions of genetic information at Code § 9832(d)(7); ERISA § 733(d)(6); and PHSA § 2791(d)(16).

78 EEOC Reg. § 1635.4(a). Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 202 (2008), 42 U.S.C. § 2000ff-1; Preamble to Final Regulations, 75 Fed. Reg. 68911, 68930 (Nov. 9, 2010). *See EEOC v. Fabricut Inc.*, No. 13-CV-0248-CVE-PJC (N.D. Okla. 2013) (employer settled first GINA Title II lawsuit in which EEOC employer violated GINA Title II by asking about an individual's family medical history in a post-offer medical examination and then violated the ADA by refusing to hire her because it regarded her as having carpel tunnel syndrome).

79 Preamble to Final Regulations, 75 Fed. Reg. 68911, 68930 (Nov. 9, 2010).

Other GINA Title II Requirements. The GINA Title II employment nondiscrimination requirements are part of a statute of much broader application that happens, as a small part of its overall application, to impact employee benefit plans. GINA imposes other nondiscrimination requirements that could affect group health plans, though as a practical matter, these requirements are likely to come into play less often for such plans than the prohibition against discrimination in the "hiring, discharge, compensation, terms, conditions, or privileges of employment" provision discussed earlier. For example, employers cannot fail or refuse to hire, or discharge any employee because of genetic information. They cannot limit, segregate, or classify employees in any way that would deprive or tend to deprive them of employment opportunities or adversely affect their status as employees because of genetic information relating to the employee.*

* Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 202(a) (2008), 42 U.S.C. § 2000ff-1; EEOC Reg. §§ 1635.4 and 1635.5.

The EEOC has provided the following examples of employer actions that would, in its view, violate GINA Title II:[80]

- An employer fires an employee "because of anticipated high health claims based on genetic information";
- An employer requires an employee "to undergo mandatory genetic testing in order to be eligible for health benefits";
- An employer "contracts with a health insurance issuer to request genetic information"; or
- An employer "amends a health plan to require an individual to undergo a genetic test."

The EEOC also noted that, in the last two examples, the health plan and the health plan insurer might also be in violation of GINA Title I. (See subsection C for a discussion of GINA Title I.)

Employer Liability for Plan Amendments. The EEOC example with regard to an employer amending a group health plan could be read to subject an employer to liability for any plan provision that violates Title II of GINA since an employer generally has control over the provisions of any group health plan that it is sponsoring. However, it appears that the EEOC does not intend for this example to be read that broadly since the EEOC has also said that "a health plan's or issuer's discrimination in health plan eligibility, benefits, or premiums based on genetic information . . . remain subject to enforcement under Title I exclusively."*

* EEOC Reg. § 1635.11(b)(2).

b. Limitations on Requesting, Requiring, or Purchasing Genetic Information

The GINA Title II employment nondiscrimination requirements generally prohibit an employer from requesting, requiring, or purchasing genetic information relating to an employee or a family member of an employee.[81] According to the EEOC, an employer can violate this requirement without a specific intent to acquire genetic information.[82]

(i) Impermissible "Requests"

For this purpose, "request" includes doing any of the following in a way that is likely to result in a covered entity (e.g., an employer) obtaining genetic information:

- conducting an Internet search;
- actively listening to third-party conversations;
- searching an individual's personal effects; or
- asking for information about an individual's current health status.[83]

80 EEOC Reg. § 1635.11(b)(2).
81 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 202(b) (2008), 42 U.S.C. § 2000ff-1; EEOC Reg. § 1635.8.
82 Preamble to Final Regulations, 75 Fed. Reg. 68911, 68913.
83 EEOC Reg. § 1635.8(a).

(ii) Exceptions to Prohibition On Employer Acquiring Genetic Information

Not every acquisition of genetic information violates GINA, however, and the final regulations provide some important exceptions to this requirement. The general prohibition against requesting, requiring, or purchasing genetic information does not apply under the following circumstances:

- The employer offers health or genetic services, including such services offered as part of a voluntary wellness program; the employee provides prior, knowing, voluntary, and written authorization; and additional conditions relating to individually identifiable information are met.[84]
- The employer requests or requires family medical history from the employee to comply with the certification provisions of FMLA § 103 or similar requirements under state family and medical leave laws.
- The information is in documents purchased by the employer that are commercially and publicly available (but not including medical databases or court records).
- The information is to be used for genetic monitoring of the biological effects of toxic substances in the workplace and certain notice, authorization, disclosure and other requirements are met.
- The employer conducts DNA analysis for law enforcement purposes as a forensic laboratory or for human remains identification, and certain other requirements are met.
- The employer inadvertently requests or requires an employee's (or family member's) family medical history. With regard to this exception, an employer's receipt of genetic information in response to a lawful request for medical information will be deemed inadvertent if language is included to specifically direct the individual or health care provider not to provide genetic information.[85]

EEOC regulations include model language to be used by an employer lawfully requesting medical information so that any genetic information included with the response will be deemed inadvertent. Although use of the model language is not required, it provides a safe harbor for employers making such requests. Employers that fail to give a notice or use similar language when requesting medical information will not be prevented 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" (e.g., where an overly broad response was received in response to a tailored request for medical information).[86]

Model Language for Requesting Medical Information. The model language provided in the regulations is—

> 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.*

* EEOC Reg. § 1635.8(b)(1)(i)(B).

[84] The regulations state that this exception will only be available for a wellness program that is voluntary, meaning that the employer "neither requires the individual to provide genetic information nor penalizes those who choose not to provide it." EEOC Reg. § 1635.8(b)(2). This position is consistent with the EEOC's prior informal positions relating to the ADA. For more information on GINA and wellness programs, see subsection E. For more information about the ADA, see Section XX. For detailed coverage of wellness programs, see *Consumer-Driven Health Care* (Thomson Reuters/Tax & Accounting, 2004-present, updated quarterly).

[85] Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, § 202(b) (2008), 42 U.S.C. § 2000ff-1; EEOC Reg. § 1635.8(b)(1).

[86] EEOC Reg. § 1635.8(b)(1)(i)(C).

For a discussion of GINA Title II and wellness programs, see subsection E.

4. Firewall Between GINA Title II Employment Nondiscrimination and Title I Health Insurance Rules

The relationship between Title I and Title II of GINA is addressed in the statute itself. The statute provides that the provisions of Title II may not be enforced against any employer for any violation of "any requirement or prohibition" that is subject to enforcement as a violation of Title I or under the provisions of HIPAA nondiscrimination provisions found in ERISA, the Code, and the PHSA.[87]

In its final regulations under Title II of GINA, the EEOC created what it refers to as a "firewall" between the employment nondiscrimination requirements contained in Title II and the group health plan and health coverage provisions contained in Title I, by explicitly identifying certain matters that are not enforceable under GINA Title II.[88] The firewall is intended to eliminate double liability—that is, to prevent causes of action based on GINA's employment nondiscrimination requirements from being asserted with respect to matters that are subject to enforcement under the group health plan and health coverage provisions.[89] For example, under the firewall provision, if a health plan or health plan insurer discriminates with respect to health plan eligibility, benefits, or premiums based on genetic information, that is subject to enforcement under Title I exclusively.[90] On the other hand, if an employer fires an employee because of anticipated high health claims based on genetic information, that violation is enforceable under Title II even though it involves access to health benefits.

The firewall does not mean that particular circumstances cannot result in violations of both Title I and Title II. For example, if an employer contracts with a health plan insurer to request genetic information, the employer will violate Title II, and the insurer may have violated Title I. Similarly, if an employer amends its plan to require an individual to undergo a genetic test, then the employer has violated Title II, and the plan may violate Title I when it administers the requirement.[91]

E. GINA and Wellness Programs

If employees and their family members are asked to provide family medical history or other genetic information as part of a wellness program, the employer offering the wellness program will be subject to and must comply with the provisions of Title II of GINA and, if the wellness program is connected to a group health plan, the wellness program itself will be subject to and must comply the provisions of Title I of GINA.

Caution: Other Laws Must Be Considered. EEOC regulations under GINA Title II explicitly warn that they do not limit any individual's rights under the ADA, any other applicable civil rights laws, HIPAA (as amended by GINA Title I), or other applicable laws and regulations. Thus, wellness programs must make reasonable accommodations to the extent required by the ADA, and a wellness program that is a group health plan must satisfy HIPAA's requirements, including the provisions of GINA Title I.* For more on wellness programs under the ADA, see Section XX.F. For more on wellness programs and HIPAA (including GINA Title I), see *HIPAA Portability, Privacy & Security* (Thomson Reuters/Tax & Accounting, 1997-present, updated quarterly). For a discussion of the various laws that can apply to wellness programs, see *Consumer-Driven Health Care* (Thomson Reuters/Tax & Accounting, 2004-present, updated quarterly).

* EEOC Reg. § 1635.11; Preamble to Regulations under the Genetic Information Nondiscrimination Act, 75 Fed. Reg. 68912, 68923 (Nov. 9, 2010)

87 42 U.S.C. § 2000ff-8(a)(2)(B).
88 EEOC Reg. § 1635.11(b)(1).
89 EEOC Reg. § 1635.11(b)(2).
90 EEOC Reg. § 1635.11(b)(2).
91 EEOC Reg. § 1635.11(b)(2), Examples (i) and (iii).

1. GINA Title I and Wellness Programs

As explained in subsection C, Title I of GINA prohibits group health plans and health insurers from collecting genetic information for underwriting purposes. "Underwriting purposes" is interpreted broadly to include determining eligibility for wellness rewards. Because GINA defines "genetic information" as including family medical history,[92] wellness programs offered under group health plans that provide rewards for completing health risk assessments that request family medical history generally violate the prohibition against collecting genetic information for underwriting purposes. This is the case even if rewards are not based on the outcome of the assessment and for that reason would not violate the final HIPAA nondiscrimination regulations regarding wellness programs.[93]

The interim final regulations provide several examples applying the rules to typical situations in which health risk assessments may be utilized by group health plans. These examples make it clear that *any* reward given by a group health plan for the completion of a health risk assessment that solicits information about an individual's family medical history violates the requirements of GINA Title I.[94]

The preamble to the interim final regulations provides something of a roadmap for compliance with Title I of GINA requirements in connection with the collection of genetic information through health risk assessments offered under a group health plan:

- make sure the request for genetic information under a health risk assessment is not made prior to or in connection with enrollment;
- provide no rewards in connection with completion of an assessment that collects genetic information;
- provide rewards for completing an assessment but do not collect any genetic information; or
- consider two distinct assessments—one that includes rewards but collects no genetic information, and another that does not include any rewards but collects genetic information.[95]

Caution: Interaction of GINA Title I and GINA Title II. Since information about a manifested health condition of an employee's spouse is considered genetic information under GINA, the GINA Title I prohibition on a group health plan's or health insurer's incentives under a wellness program for collection of genetic information (e.g., on a health risk assessment) has created uncertainty regarding the validity of incentives offered for completion of a health risk assessment by an employee's spouse. EEOC regulations under Title II of GINA issued in May 2016 clarify that offering limited incentives under an employee wellness program in exchange for information about a spouse's manifested health conditions is permitted if specific conditions are met.* However, the EEOC regulations do not address the application of Title I of GINA to health risk assessments since Title I is under the jurisdiction of the DOL, HHS, and IRS. Employers who consider offering wellness incentives in exchange for collection of health information about an employee's spouse should review this issue with legal counsel.

* Preamble to Regulations under the Genetic Information Nondiscrimination Act, 81 Fed. Reg. 31143 (May 17, 2016); 29 CFR Part 1635.

For more on GINA Title II, see the discussion in subsections D and E.2. For more information on GINA Title I and wellness programs, see *HIPAA Portability, Privacy & Security* (Thomson Reuters/Tax & Accounting, 1997-present, updated quarterly). For detailed coverage of wellness programs, see *Consumer-Driven Health Care* (Thomson Reuters/Tax & Accounting, 2004-present, updated quarterly).

92 Code § 9832(d)(7)(A); ERISA § 733(d)(6)(A); PHSA § 2791(d)(16)(A); DOL Reg. § 2590.702-1(d)(1).
93 74 Fed. Reg. 51664, 51668 (Oct. 7, 2009).
94 DOL Reg. § 2590.702-1(d)(3).
95 74 Fed. Reg. 51664, 51669 (Oct. 7, 2009).

2. GINA Title II and Wellness Programs

As discussed in subsection D, it is an unlawful employment practice under Title II of GINA for an employer to request or require an employee or family member to provide family medical history or other genetic information.[96] This general prohibition against the acquisition of genetic information is, however, subject to several exceptions, including a specific exception for certain voluntary wellness programs.

> **Caution: Interaction of GINA Title II and GINA Title I.** EEOC final regulations under Title II of GINA issued in May 2016 apply to employers and clarify that offering limited incentives under an employee wellness program in exchange for information about a spouse's manifested health conditions is permitted if specific conditions are met.* However, the EEOC regulations do not address health risk assessments under Title I of GINA, which applies to group health plans, since Title I is under the jurisdiction of the DOL, HHS, and IRS. Employers offering wellness incentives through a group health plan must take into consideration Title I and Title II of GINA and should review this issue with legal counsel. GINA Title I is discussed in subsections C and E.1. For more detailed information, see *HIPAA Portability, Privacy & Security* (Thomson Reuters/Tax & Accounting, 1997-present, updated quarterly).

* Preamble to Regulations under the Genetic Information Nondiscrimination Act, 81 Fed. Reg. 31143 (May 17, 2016).

a. GINA Title II Conditions for Wellness Programs

Under the GINA Title II wellness exception, employers (and other covered entities) may request genetic information if certain conditions are met, including the following:

- The employer (or other covered entity) offers "health or genetic services, including such services offered as part of a voluntary wellness program";
- the program is reasonably designed to promote health or prevent disease;
- the information is provided voluntarily;
- the individual provides a prior "knowing, voluntary, and written authorization" using a form that describes the type of genetic information that will be obtained, the purposes for which it will be used, and the restrictions that will apply to that genetic information;
- individually identifiable information is provided only to the individual (or family member receiving the genetic services) and the licensed health care professionals or board-certified genetic counselors providing the services;
- the individually identifiable information is "not accessible to managers, supervisors, or others who make employment decisions, or to anyone else in the workplace";
- the individually identifiable information is only available for purposes of the "health or genetic services" offered by the employer (or other covered entity) and is not disclosed to the employer (or other covered entity), "except in aggregate terms that do not disclose the identity of specific individuals";
- the employer does not condition participation in the program or inducements (other than those specifically permitted for information about a spouse's manifest medical conditions) on agreeing to disclose genetic information;
- the employer does not deny health insurance "or any package of health insurance benefits" for a spouse's refusal to provide information about manifested diseases or disorders; and
- for plan years beginning on or after January 1, 2017, but before January 1, 2019, inducements used in connection with a spousal health risk assessment satisfy specific limits and other requirements. Incentives are not permitted for information about the manifestation of disease or disorder in an employee's child. (Inducements for health risk assessments of spouses and other family members are discussed in more detail below.)[97]

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[96] 42 U.S.C. §§ 2000ff-1 (employers), 2000ff-2 (employment agencies), 2000ff-3 (labor organizations), and 2000ff-4 (employers, labor organizations, or joint-labor-management committees controlling apprenticeship or training programs).

[97] Regulations under the Genetic Information Nondiscrimination Act, 81 Fed. Reg. 31143 (May 17, 2016); EEOC Reg. § 1635.8(b)(2).

Spousal Authorization for Collection of Genetic Information. Medical information concerning an employee's spouse is considered to be "genetic information" regulated by GINA. If an employer wishes to allow the spouse of an employee to participate in its wellness program, and the wellness program will collect medical information about the spouse (genetic information), the spouse must provide "prior knowing, voluntary, and written authorization" that complies with the requirements of the GINA regulations. EBIA has developed a Sample Authorization Form for this purpose, which is reproduced behind Appendix Tab 10.

b. Inducements for Health Risk Assessments of Spouses and Other Family Members

Before EEOC regulations were issued in May 2016, there was uncertainty as to whether providing incentives in exchange for information on a health risk assessment about a spouse's or child's current or past health status could subject an employer to liability under GINA. Under EEOC regulations issued in November 2010, medical information about an employee's family members is considered to be genetic information as to the employee,[98] so there was concern that an employer's health risk assessment asking for medical information for a spouse or child could violate the GINA Title II rule prohibiting employers from making genetic information requests if the wellness exception did not apply. For plan years beginning on or after January 1, 2017, the EEOC regulations issued in May 2016 allowed an employer to offer limited inducements for information about a spouse's manifestation of disease or disorder as part of a health risk assessment administered in connection with an employer-sponsored wellness program. An employer could not, however, provide any inducement for any other genetic information of the spouse.[99]

Information About Spouse's Tobacco Usage Does Not Constitute "Genetic Information." An employer-sponsored wellness program—

> does not request genetic information when it asks the spouse of an employee whether he or she uses tobacco or ceased using tobacco upon completion of a wellness program or when it requires a spouse to take a blood test to determine nicotine levels, as these are not requests for information about the spouse's manifestation of disease or disorder.*

* Preamble to Regulations under the Genetic Information Nondiscrimination Act, 81 Fed. Reg. 31143, 31148 (May 17, 2016).

The 2016 regulations were more restrictive when it comes to genetic information of an employee's children. An employer may not provide any inducement for any genetic information of an employee's children. Although an employer may request information about the manifestation of diseases or disorders in an employee's spouse, an employer may not ask about the same in the employee's children.[100]

98 42 U.S.C. § 2000ff(4)(iii); EEOC Reg. § 1635.3(c)(1)(iii), 75 Fed. Reg. 68912 (Nov. 9, 2010) (genetic information includes information about the "manifestation of disease or disorder in family members of the individual (family medical history)").

99 Preamble to Regulations under the Genetic Information Nondiscrimination Act, 81 Fed. Reg. 31143, 31144 (May 17, 2016); EEOC Reg. § 1635.8(b)(2)(iii).

100 Preamble to Regulations under the Genetic Information Nondiscrimination Act, 81 Fed. Reg. 31143, 31144 (May 17, 2016); EEOC Reg. § 1635.8(b)(2)(iii).

