



New Employment Discrimination Laws

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ADA Amendments Act

- Disability: physical or mental impairment that substantially limits a major life activity
- Construed very narrowly by courts
- New mandate: broad coverage



Major Life Activity

- ADAAA added non-exhaustive list of activities and bodily functions
- E.g. performing manual tasks, standing, concentrating.
- E.g. immune, neurological, and endocrine function and normal cell growth



Mitigating Measures

- Reversed Supreme Court decision
- Mitigating measures such as medication or medical devices cannot be considered in determining disability status
- E.g. patient with diabetes whose symptoms are well- controlled by medication now covered by ADA



Conditions in Remission or Episodic

- Impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.



“Regarded As” Prong

- Under this prong, Plaintiff must show only that she was subjected to discrimination because employer believed she had impairment.
- Impairment cannot be minor or last less than 6 months
- No reasonable accommodation entitlement



Mental Health Parity and Addiction Equity Act

- Enacted as part of Pres. Bush Wall Street Rescue
- Covers employers with over 50 employees
- Health insurance plans not required to offer mental health coverage

If mental health coverage is offered

- Financial requirements can't be more burdensome than for physical health or surgical coverage (e.g. deductibles, copayments, out-of-pocket expenses)
- Treatment limitations can't be more restrictive (caps on # of visits, days of coverage)
- Equality in out-of-network coverage

MHPAEA

- States can offer broader coverage
- Government enforcement & private cause of action
- If mental health & addiction coverage results in >2 (1)% cost increase, plan obtains a 1 year exemption from statutory compliance

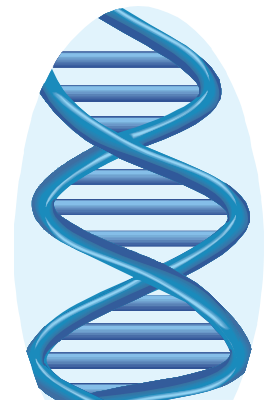


Lilly Ledbetter Fair Pay Act

- Overturns Ledbetter v. Goodyear Tire
- Charge filing period (300 or 180 days) triggered each time compensation paid pursuant to discriminatory decision or practice
- Applies to Title VII, ADEA, ADA & Rehabilitation Act
- Backpay limited to 2 years

GINA 5/21/08

- Effective 10/09 for employers
- Prohibits employers from discriminating based on genetic information
- Amends Title VII





GINA

- Employers may not subject applicants and employees to discrimination based on genetic information.
- Employers may not request, require, or purchase genetic information from applicants, employees or family members.
- Employers may obtain genetic information as follows:

GINA exceptions

- Inadvertent inquiries re: family history
- Wellness programs with informed consent
- FMLA
- Publicly available data
- To monitor biological effects of toxic substances in workplace
- DNA analysis for law enforcement as forensic lab



Confidentiality & state laws

- Confidentiality of genetic information must be safeguarded
- Medical information must be stored separately
- Access granted to authorized personnel only
- Stricter state laws not preempted



GINA criticism

- Too many exceptions, e.g. genetic information contained in records authorized for release to employer
- How do you isolate genetic information in medical records?
- Stigmatize genetic conditions?
- How do we define “genetic”?