

## WORK SPACE BY DIANE STAFFORD

### Genetics cannot be employment issue

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If you have the breast cancer gene, is an employer justified in not promoting you to a key job out of fear that you'll get sick? If you have diabetes, controlled by medication, should an employer be able to find that out and not hire you in assumption your health insurance costs will be high?

I recently dug into a thick file labeled, "Genetics as employment issue."

The file chronicles explosive scientific advances in genetic testing and a 10-year congressional history of proposals to ban the use of such information in employment and some insurance decisions.

In 1998, 2001, 2003, 2005 and 2007, Congress considered such a law. This year, the Genetic Information Non-discrimination Act of 2008 passed and is scheduled to go into effect in 2009.

The U.S. Chamber of Commerce and the Society for Human Resource Management said the law was unnecessary and that the Americans with Disabilities Act and the Health Insurance Portability and Accountability Act provides the same protections. Attorneys for employers said it opens up another cause of litigation from unhappy workers or job applicants.

Proponents in the medical and civil rights communities disagreed.

The National Society of Genetic Counselors, **the American Society of Human Genetics**, the American Heart Association, the American Academy of Pediatrics, the National Partnership for Women & Families and dozens of organizations that exist to educate and support people with genetic-influenced diseases delighted in the bill's passage.

It is, they said, a case of federal law keeping up with medical advances rather than waiting for individual court cases to make piecemeal policy when workers or insurance applicants allege discrimination.

But more than that, proponents say, the law may help save lives and provide early diagnosis and treatment. Nearly 1,200 genetic tests exist to help people know whether they have or may be likely to have certain diseases or disabilities.

Doctors have reported that patients forgo such testing for many reasons. Some don't want to know. Some can't handle the costs. Others fear the information will be used against them by employers or insurance firms.

The law addresses the third concern. As of November 2009, it will be illegal for employers, agencies or labor unions to buy or ask applicants or employees for genetic-testing results.

If they get such information, they're supposed to keep it confidential and separate from other work files and not use it to make hiring, promotion, firing, compensation or other employment decisions.

The law also bans insurance companies from buying or requiring genetic information to make eligibility or premium decisions for group health plans that take effect on or after May 21.

Under the law, group health plans and insurers will not be able to require individuals to undergo genetic

testing, and the use of genetic information for pre-enrollment underwriting purposes will be prohibited.

It also prohibits group health plans from changing contribution or premium amounts for a group based on genetic information.

Once a health-plan enrollee evidences a disease, though, pre-existing exclusions can apply, and group premium costs can be increased. Also, insurers can request genetic information to resolve claims of individual enrollees.

Will the law encourage people to get tests that could help save, extend or improve the quality of their lives? Will the law prevent employment or insurance discrimination based on genetic information?

As with so many complex issues, and especially in respect to employment decisions that can almost always be attributed to something other than a charged act of discrimination, the answers will be yes and no.