

**CITY OF PORTSMOUTH**  
**ADMINISTRATIVE POLICY**

**#24**

**February 2012**

**SUBJECT:** Genetic Information Nondiscrimination Act (GINA)

**POLICY:** In accordance with the Genetic Information Nondiscrimination Act (GINA), the City is prohibited from requesting or requiring genetic information of an individual or family member unless a lawful exception applies, including the inadvertent disclosure exception, request for medical information and safe harbor exception, and the FMLA exception. The City will not discriminate on the basis of genetic information it inadvertently receives or receives pursuant to a lawful exception, or use genetic information in making decisions to hire, promote or terminate employees.

**PURPOSE:** GINA was enacted by Congress in 2008, Title II of GINA was effective November, 21, 2009 and GINA regulations became effective January 10, 2011.

GINA generally prohibits employers from requesting, requiring or purchasing an individual's genetic information, unless a lawful exception applies, and from making employment decisions based on such genetic data. Therefore, it is the City's policy that genetic information should not be provided or received from health care providers or employees, including an individual's family medical history, the results of an individual's or family member's genetic tests, or the fact that genetic services were sought or received for any purpose, unless a lawful exception applies.

GINA also prohibits discrimination and harassment on the basis of genetic information and/or retaliation for complaints filed regarding genetic information.

**SCOPE:** GINA applies to employers with 15 or more employees where the term "employee" includes both applicants and former employees.

**DEFINITION:** The GINA regulations define genetic information to include:

- An individual's genetic tests;
- Genetic tests of an individual's family members;
- The manifestation of disease or disorder in family members;
- An individual's request for, or receipt of, genetic services, or participation in clinical research that includes genetic services by an individual or family member; or
- The genetic information of a fetus carried by an individual or by a pregnant family member using an assisted reproductive technology.

The definition specifically excludes information about the sex or age of the individual or of family members or information about race or ethnicity not derived from genetic testing.

**EXCEPTIONS:** GINA’s exceptions under the new regulations include the following:

- **Inadvertent Disclosure Exception:** An employer’s inadvertent acquisition of genetic information applies to situations where an employer—acting through a supervisor or other representative—overhears a conversation, receives an unsolicited communication or following a general inquiry, obtains information about an individual’s or family members’ genetic information. The regulations make clear these “water cooler” disclosures of genetic information do not expose an employer to liability under GINA.
- **Request for Medical Information and Safe Harbor Exception:** The regulations include a “safe harbor” provision to address the situation when an employer seeks medical data for the purposes of evaluating individual claims for sick leave, requests for leave pursuant to the FMLA, requests for reasonable accommodations under the ADA and other laws, requests for withdrawal from the sick leave bank and requests for advanced sick leave. The “safe harbor” provision is as follows:
  - 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.
- **FMLA Exception:** The new regulations specifically recognize employers may receive genetic information from individuals or health care providers in conjunction with requests for leave to care for seriously ill family members pursuant to the FMLA. In fact, FMLA requests sometime necessitate the receipt of genetic information so the employer can appropriately evaluate the request.

**COMPLAINT PROCEDURE:** Persons covered by this policy may contact the Department of Human Resource Management for assistance in resolving their complaints.