



Information Every Business Needs to Know

HR & Benefits Advisor

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Happy Holidays from the Law Offices of Travis Bowen, PC

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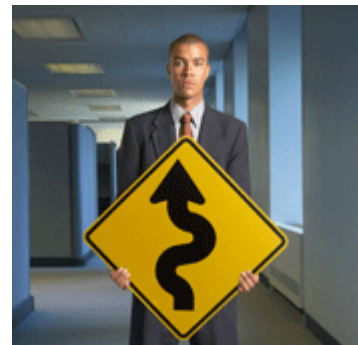
Genetic Nondiscrimination Information Act (GINA) Related to Employers Now In Effect



Title II of the Genetic Information Nondiscrimination Act of 2008, which prohibits genetic information discrimination in employment, took effect on

Confidentiality and Non-Competition Agreements: Protecting Your Company

Did you know that your company has trade secrets? Many companies assume that only exotic information like the formula for Coca Cola constitutes a trade secret. However, the concept is much larger. Your customer lists, business practices, business plans, and much of the information which you use to run your business—all are trade secrets. Keeping that information confidential and away from your competitors or the public is important.



Importance of Signing a Non-Disclosure Agreement

How do you protect your trade secrets and other proprietary data? The answer is to require all employees to sign confidentiality agreements, also known as non-disclosure agreements or "NDA's." These are agreements that should be signed on the first day of employment by every employee who has access to any proprietary data. A copy should also be included in your employee handbook.

In the agreement, the employee will promise to keep all proprietary information obtained in the course of his or her employment confidential both during his employment and for a reasonable period of time afterward. The agreement may define what information is considered proprietary or confidential. You may consider adding language that provides that any breach of the agreement by an employee is grounds for immediate discharge. In addition, you may consider requiring that if the employer must sue an employee or former employee to enforce the agreement, the employer can recover legal fees and the costs of litigation. The importance of the NDA cannot be overestimated. It is designed to protect some of the most important assets of your business. We strongly recommend that you have your agreement drafted by experienced employment counsel.

Non-Competition Agreements - Do's and Don'ts

November 21, 2009. Under Title II of the Genetic Information Nondiscrimination Act (GINA), it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information. [More information on GINA.](#)

FMLA Military Leave Rights Expanded



Effective Oct. 28, 2009, the Family & Medical Leave Act provides extended benefits to military families. The National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647) expands FMLA active duty leave to cover service members of the regular Armed Forces during deployment to a foreign country. The amendment also applies to service members in the Reserves who are deployed to a foreign country under a specific call or order to active duty. The Act extends FMLA exigency leave coverage to family members of active duty members of the Armed Forces. The expanded FMLA rights are effective

You may also want to consider having employees sign non-competition agreements. Although such agreements are unlawful in California, most states allow them so long as they are reasonable in time and geography. For example, if you have a software company, you might require that former employees refrain from recruiting your customers, hiring your employees, or competing with you within a radius of 100 miles for a period of two to three years. Generally non-competition covenants cannot have the effect of prohibiting the former employee from earning a living in his or her area of expertise. That is, the restrictions cannot be so great that the employee cannot work for any other employer anywhere. However, the agreements can prevent an employee from learning your business and then opening up a competing business in the same town or region.

Providing Consideration

It is important to know that in most states, any non-competition agreement must be supported by independent consideration i.e., a benefit or payment to the employee in exchange for a commitment not to compete. The benefit or payment must be something to which the employee is not otherwise entitled. Therefore, you should have employees sign a non-competition agreement when they begin employment, making it a term and condition of hiring the employee. If you initiate such agreements later, in most states, you will have to provide some additional payment or benefit, typically something other than continued employment.

Some non-compete agreements extend to a much broader area, but the larger the geographic area and the longer the effective period of the agreement, the greater risk the agreement will not be enforced. Some state courts will "blue line" agreements, striking any part that is not enforceable and upholding the rest. Other state courts will simply throw the whole agreement out if it is not deemed "reasonable."

Here, too, you may want to consider adding that the former employee must pay the legal fees and litigation costs if the former employer sues successfully to enforce the non-compete covenant.

It may be that you will never have to face an unscrupulous employee taking your proprietary information and converting it for his or her own use, or an employee taking advantage of your training only to open up a competing company not far away. However, if you do face that challenge, well-crafted confidentiality and non-compete agreements can save you considerable headaches, and reduce your financial risk.

This article was written by Kenneth A. Sprang, a consultant and contributing editor for HR Benefits Essentials. Mr. Sprang, an employment lawyer with over 30 years experience in the field, is a partner in the Washington, DC office of the Boston based firm Perry, Krumsiek and Jack. He may be reached at (202) 683-4090.

Employer Guidelines for Background Checks

If you are thinking of hiring a new employee, you may be interested in conducting a background check. Before initiating a background check, it's



immediately.

The family and medical leave provisions for service member families are viewable here, under [Section 565](#) of the Authorization Act.

U.S. Department of Labor Publishes Supplemental FAQs about the 2009 Form 5500

The U.S. Labor Department has published supplemental FAQs to Schedule C of the 2009 Form 5500 Annual Return/Report of Employee Benefit Plan. The FAQs are intended to provide guidance on questions from plans and service providers on requirements for reporting service provider fees and other kinds of compensation on the Schedule. The [questions and answers are provided by the Department's Employee Benefits Security Administration](#).

important for you to know the laws and guidelines to follow.

What Information is Available in a "Consumer Report"?

The government often calls these background checks "consumer reports," which are subject to a number of privacy and disclosure laws. A consumer report can include records of credit payments, driving records and criminal histories, among other information. When prepared by a consumer reporting agency, (a business that assembles such reports for other businesses) the report is covered by the [Federal Fair Credit Reporting Act \(FCRA\)](#), and employers must follow certain key disclosure requirements.

Prior Notice and Permission

Before obtaining a consumer report, the FCRA requires employers to send applicants or employees a written notice that the employer may use the report for making an employment decision. Employers must then receive a written authorization from the person before requesting a report from a consumer reporting agency.

Providing a Consumer Report Copy and "Summary of Rights"

An employer that bases an "adverse action" on a consumer report needs to provide the individual with an additional notice before taking the action. "Adverse actions" include denying a job application or promotion, or terminating or reassigning an employee. Before taking the adverse action, an employer must make a pre-adverse action disclosure to an individual that includes a copy of the person's consumer report and a "[Summary of Your Rights Under the Fair Credit Reporting Act](#)."

Notice of the Adverse Employment Action

Once an employer takes an adverse action, the company needs to provide the applicant or employee with another adverse action notice. This adverse action notice must include:

- The name, address and phone number of the consumer reporting agency that prepared the consumer report;
- A statement that the supplying consumer reporting agency did not take the adverse action and cannot give specific reasons for it; and
- The individual's right to dispute the accuracy or completeness of the report, and his or her right to request an additional free consumer report from the supplying agency within 60 days of receiving notice of the action

These pre- and post-adverse action notices are required of employers whenever any information in a report influences an employer's adverse action, even if the information isn't negative, according to the Federal Trade Commission.

Penalties

The FCRA allows individuals to sue employers for money damages if an employer does not get authorization for a consumer report or does not provide them with pre- and post-adverse action notices. It's also important to remember that many states have their own consumer reporting laws which may afford individuals more rights than those discussed here under the Fair Credit Reporting Act. For more information on employer obligations under the [Fair Credit Reporting](#)

Transportation Benefits - the Latest Guidelines

Are you considering providing transportation benefits to your employees? These qualified transportation fringe benefits are excluded from an employee's gross income for income tax purposes and from an employee's wages for payroll tax purposes. The following are the latest federal guidelines.

Under the American Recovery and Reinvestment Act (ARRA), the monthly tax exclusion for employer-provided commuter highway vehicle transportation and transit pass benefits increased to \$230. Employees may exclude from income \$230 per month in transit benefits and \$230 per month in parking benefits — up to a maximum of \$460 per month. Employees may receive benefits for commuter transportation and transit passes and benefits for parking during the same month; they are not mutually exclusive. The law providing for these equal benefits extends from March 2009 through December 31, 2010. The monthly exclusion amount for 2010 may be adjusted for inflation.



Reimbursement Arrangements

Employers may also set up a bona fide reimbursement arrangement and still preserve these tax exclusions for employees. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass is not readily available from the employer. Generally, you can exclude qualified transportation fringe benefits from an employee's wages even if you provide them in place of pay. However, qualified bicycle commuting reimbursements do not qualify for this exclusion.

Qualified Bicycle Commuting Reimbursement

As of 2009, the exclusion for qualified bicycle commuting reimbursement includes any employer reimbursement for expenses incurred by the employee during the 15-month period beginning with the first day of the calendar year. For any employee, qualified bicycle commuting is any month the employee regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment and does not receive transportation in a commuter highway vehicle, any transit pass, or qualified parking benefits.

For a calendar year, the excludable amount is \$20 multiplied by the number of qualified bicycle commuting months during that year.

For more information on transportation and other fringe benefits, see the [Update to the 2009 Publication 15-B, Employer's Tax Guide to Fringe Benefits](#).

Workplace Action Plan to Cope with Flu Season

As we approach the heart of the flu season, it is important for employers to review the best ways to prevent and deal with flu in the workplace. The Occupational Safety and Health Administration (OSHA) urges employers to have a comprehensive action plan in place in the event of workplace exposure to the flu. It is particularly important to set up a policy for assisting and filling in for employees who become sick. The following are additional steps to take to help protect your employees.



- Develop policies that encourage sick workers to stay at home without fear of reprisals.
- Promote proper hand hygiene and cough etiquette.
- Discontinue nonessential travel to locations having high prevalence of illness.
- Develop practices to minimize face-to-face contact between workers, such as extended use of e-mail, websites and teleconferences.
- Rely on home delivery of goods and services to reduce the number of clients or customers who must visit your workplace.
- Develop emergency communications plans. Maintain a forum for answering workers' concerns. Develop Internet-based communications, if possible.

Employers and workers can review OSHA's [Workplace Safety and H1N1](#) publication, which contains guidance for employers and workers in non-healthcare and healthcare industries. There is also an OSHA fact sheet, [What Employers Can Do to Protect Workers from Pandemic Influenza](#). For guidance from Centers for Disease Control and Prevention, see [Guidance for Businesses and Employers to Plan and Respond to the 2009-2010 Influenza Season](#).

For downloadable posters promoting sanitary habits in the workplace, view [OSHA's Guidance](#).

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Law Offices of Travis Bowen, PC
136 East South Temple, Suite 1050
(800) 617-2873
www.bowenlaw.com