

**NLWJC - Kagan**

**DPC - Box 028 - Folder 018**

**Health - Gender  
Discrimination**

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EXECUTIVE ORDER

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TO PROHIBIT DISCRIMINATION IN FEDERAL EMPLOYMENT  
BASED ON PROTECTED GENETIC INFORMATION

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is ordered as follows:

**Nondiscrimination in Federal Employment on the Basis of  
Protected Genetic Information**

1-101. It is the policy of the Government of the United States to provide equal employment opportunity in Federal employment for all qualified persons and to prohibit discrimination against employees based on protected genetic information or information about a request for or the receipt of genetic services. This policy of equal opportunity applies to every aspect of Federal employment.

1-102. The head of each Executive department and agency shall extend the policy set forth in Section 1-101 for all its employees covered by Section 717 of Title VII of the Civil Rights Act of 1964 as amended.

1-103. Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information or information about a request for or the receipt of genetic services.

**Requirements Applicable to Employing Departments and Agencies.**

1-201. Definitions.

- (a) The term "employee" shall include an employee, applicant for employment or former employee covered by Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-

16).

- (b) Genetic monitoring means 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 in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, or respond to the effects of, or control, adverse environmental exposures in the workplace.
- (c) Genetic services means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes, or for genetic education or counseling.
- (d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites are covered when an excess or deficiency of the metabolite indicates the presence of a mutation or mutations.
- (f) Protected genetic information.
  - (1) In general, protected genetic information means--
    - (A) information about an individual's genetic tests;
    - (B) information about genetic tests of family members of the individual; or
    - (C) information about the occurrence of a disease or disorder in family members of the individual.
  - (2) Information about an individual's current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses of the individual) is not protected genetic information unless it is described in subparagraph (1).

1-202. The agencies, in discharging their responsibilities under this order, shall implement the following nondiscrimination requirements.

- (a) The employing department or agency shall not discharge, fail or refuse to hire, or

otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee or by a family member of such employee.

- (b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the employee's status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee or by a family member of such employee.
- (c) The employing department or agency shall not request, require, collect or purchase protected genetic information with respect to an employee or a family member of the employee or information about a request for or the receipt of genetic services by such employee or by a family member of such employee.
- (d) The employing department or agency shall not disclose protected genetic information with respect to an employee or information about a request for or the receipt of genetic services by an employee or by a family member of an employee except --
  - (1) to the employee who is the subject of the information, at the request of that employee to whom disclosure is being made;
  - (2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;
  - (3) under legal compulsion of a Federal court order, except that if the court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the court order unless the court order also imposes confidentiality

requirements;

- (4) to government officials investigating compliance with this Executive Order if the information is relevant to the investigation; and
  - (5) to government officials in connection with a compelling national security or law enforcement matter.
- (e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be maintained separately from personnel files.

#### Exceptions

1-301. The following exceptions shall apply to the nondiscrimination requirements set forth in Section 1-202.

- (a) The employing department or agency may request, require, collect, or purchase protected genetic information with respect to an employee or any information about a request for or receipt of genetic services by such employee or by a family member of such employee if :
- (1) the employee or family member uses genetic or health care services provided by the employer;
  - (2) the employee or family member who uses the genetic or health care services has provided prior, knowing, voluntary, and written authorization to the employer to collect protected genetic information;
  - (3) the person who performs the genetic or health care services does not disclose the results of the genetic services to anyone except to the employee who uses the services, and pursuant to section 1-202(d) of this order; and
  - (4) such information is not used in violation of Sections 1-202(a) or 1-202(b) of this Executive Order.
- (b) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

- (1) the employee has provided prior, knowing, voluntary, and written authorization;
  - (2) the employee is informed of the specific results of the monitoring;
  - (3) the employee is informed of any other protected genetic information that may have been acquired, provided that the employee has given prior, knowing, voluntary, and written consent to such additional disclosure;
  - (4) the monitoring conforms to any genetic monitoring, regulations that may be promulgated by the Secretary of Labor; and
  - (5) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.
- (c) This Executive Order does not limit the statutory authority of a Federal agency to (1) promulgate or enforce workplace safety and health laws and regulations or (2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, Code of Federal Regulations, (3) collect protected genetic information as part of a lawful program, the exclusive purpose of which is to carry out identification of remains.

#### Miscellaneous

1-401. The head of each department and agency shall take appropriate action to disseminate this policy, and to this end shall designate a high level official responsible for carrying out its responsibilities under this Executive Order.

1-402. Nothing in this Executive Order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of Americans with Disabilities Act of 1990 and any other Federal statute;

(b) supersede any provision of the Privacy Act of 1974 (5 U.S.C. 552a), and actions taken under this Executive Order shall be in compliance with the Privacy Act;

(c) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program; or

(d) supersede any other statute, regulation, or rule that requires disclosure of information.

1-403. After consultation with the Secretary of the Department of Health and Human Services and the Chair of the Equal Employment Opportunity Commission, an agency may:

(a) determine that the collection of protected genetic information is required from an individual, after a conditional offer of employment is made, when the collection of such protected genetic information is job-related and consistent with business necessity within the meaning of the Rehabilitation Act;

(b) determine that the use of such protected genetic information to make an employment decision is necessary to avoid a direct threat within the meaning of the Rehabilitation Act.

1-404. This order clarifies and makes uniform administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

THE WHITE HOUSE,

**Revisions to 1-201(d)**

Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites are covered when an excess or deficiency of the metabolite indicates the presence of a mutation or mutations. Genetic test does not mean the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites for human identification or forensic purposes at the request of a court or law enforcement agency.

*An agency may determine, after consulting with the Secretary of HHS and the Chair of EEOC, that the collection of protected genetic information regarding family history is necessary to avoid an imminent risk to the health of an employee. In such cases, an agency may, in consultation with HHS and EEOC, collect such information after an individual has begun employment and may consider it in determining appropriate work responsibilities of the employee.*

**Revisions to 1-201(d)**

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