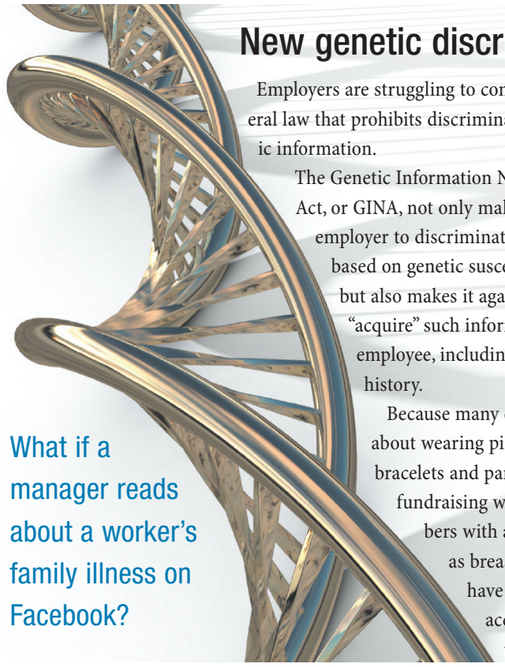

What if a manager reads about a worker's family illness on Facebook?

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New genetic discrimination law creates problems for employers

Employers are struggling to comply with a new federal law that prohibits discrimination based on genetic information.

The Genetic Information Non-Discrimination Act, or GINA, not only makes it illegal for an employer to discriminate against workers based on genetic susceptibility to illness, but also makes it against the law merely to "acquire" such information about an employee, including family medical history.

Because many employees are open about wearing pink ribbons or yellow bracelets and participating in fundraising walks for family members with a genetic illness such as breast cancer, employers have to be careful about acquiring such information and what they do with it if they do acquire it.

The first lawsuit under GINA was filed in April by a Connecticut woman who underwent a double mastectomy and claims she was terminated as a result of telling her employer that she had tested positive for a breast cancer gene.

The law makes an exception if genetic information is "inadvertently" obtained by an employer through "publicly and commercially available" resources, such as newspapers and magazines. So an employer who happens to learn about an employee's family medical history by reading a newspaper obituary about one of the employee's relatives would be exempt.

However, the law doesn't say what happens if an employer monitors employees' social media sites and acquires information that way.

The U.S. Equal Employment Opportunity Commission has asked for public comment on the social media question, and is expected to provide regulations sometime in the future.

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Legal pitfalls of unpaid internships

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As many employers (and quite a few students) found out this summer, unpaid internships can create a number of legal problems.

Even though hiring unpaid interns is a common practice – and it's even more popular in these tight economic times – the truth is that there are relatively few situations in which an unpaid intern can legally work in a for-profit business.

Employers need to be on guard because the Department of Labor has announced that it is stepping up enforcement of violations.

According to the Department, the key to a valid internship program is that the internship must be primarily for the intern's benefit – rather than for the employer's benefit.

There are six factors to be considered in deciding if an unpaid internship is okay for a private-sector, for-profit business. All of the factors must be met to make the internship legal – regardless of whether the intern voluntarily agrees to work without pay.

The factors are:

- The training is similar to what would be provided in a vocational school or educational institution.
- The training is for the benefit of the intern.
- The intern doesn't displace any regular

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An internship is much more likely to be considered valid if the intern is doing things that increase his or her skill set, as opposed to spending all day running a copy machine or doing other clerical tasks.

Legal pitfalls of unpaid internships *continued from page 1*

employees, but works under their close observation.
- The employer derives no immediate advantage from the intern (and on occasion its operations may actually be impeded).
- The intern is not necessarily entitled to a job at the conclusion of the internship.
- Both the employer and the intern understand that the internship is unpaid.

An internship is much more likely to be considered valid if the intern is doing things that increase his or her skill set, as opposed to spending all day running a copy machine or doing other clerical tasks.

An unpaid internship should never be used as an "introductory" or "probationary" period prior to someone's being hired. This can get an employer into legal hot water.

If you're an employer and you believe you can properly offer an unpaid internship, it's a good idea to create a written document that shows how the internship meets the criteria and states what the company expects from the intern, that it is an educational experience, that the internship is for a specified period, and that it's unpaid.

If you're an employer and you're not certain that an internship plan is valid, another option is to pay minimum wage instead. However, be aware that you'll also have to pay overtime if the intern works more than 40 hours a week.

More employees are entitled to time off to care for children

An employee may have a right to take time off to care for a sick child even if the employee isn't actually the parent of the child.

That's the word from the U.S. Department of Labor, which recently decided that an employee may have such a right under the Family and Medical Leave Act.

The Act is a federal law giving employees up to 12 weeks of unpaid time off each year for personal sick leave or to care for a family member who is ill.

According to the Department, employees who have a right to take time off to care for a child include not only biological parents, but also adoptive parents, foster parents, stepparents, and anyone else who stands in the shoes of a parent by assuming "day-to-day responsibilities to care for and financially support a child."

This could include:

- A grandparent or who takes in a grandchild and assumes responsibility for raising the child because the parents are unable to do so.
- An aunt who takes over raising a child after the death of the child's parents.
- A same-sex partner who shares in raising an adopted child but doesn't have a legal relationship to the child.

An employer may require that an employee show proof of a family relationship before allowing the time off, the Department says.

However, according to the Department, in most situations all an employee has to provide is "a simple statement asserting that the…family relationship exists."

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'Non-sexual' comments can be sexual harassment

Two recent cases show that even comments that aren't specifically sexual can still amount to sexual harassment.

In one case, a female doctor who worked at a clinic sued over crude comments made by a male doctor. She claimed that over the course of several years the doctor repeatedly made inappropriate comments about her weight gain while pregnant and about breastfeeding.

A federal judge threw the case out, saying that "general crudity" didn't amount to sex discrimination. But an appeals court in Virginia reinstated the woman's suit. It said that sexual harassment could include "highly personalized comments designed to demean and humiliate" the doctor and "ridicule her in the eyes of patients and drug salespeople."

In another case, a federal appeals court in New York ruled that a male supervisor's threats against a female employee could amount to illegal sexual harassment even if the threats themselves weren't explicitly sexual or gender-related.

The supervisor managed an engineering project for a company that built nuclear submarines for the U.S. Navy. A female employee claimed that he made advances toward her when his marriage began to break up.

When she complained, he said he wanted to kill her, choke her and "see her in a coffin."

A judge dismissed the suit, saying that the threats were highly inappropriate but didn't amount to sex discrimination because a threat to kill someone has nothing to do with sex.

But the appeals court allowed the woman's lawsuit to go forward. It said that the threats were related to sex because they were the result of the fact that the woman spurned the man's sexual advances.

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New rules apply when companies change health insurance

The health care law passed by Congress earlier this year contains a wide variety of new rules for employer-provided health insurance, such as requirements of coverage for pre-existing conditions and dependents up to age 26.

However, if a company had a plan in place on March 23, 2010 that didn't meet these requirements, in some cases it can be "grandfathered" and remain exempt from them, at least for a time.

But this is tricky. If a company makes certain changes to its plan, it can lose its "grandfather" status.

For instance, a company can be "de-grandfathered" if it eliminates or substantially reduces certain types of coverage, such as dropping cancer coverage. It can also lose grandfather status if it reduces employer contributions by more than five percent, raises co-payments more than $5 or 15 percent (whichever is greater), or raises deductibles more than medical inflation plus 15 percent.

Interestingly, companies can also lose grandfather status if they change carriers – even if the plan itself remains identical.

Companies that switch health insurers may face new rules even if the plan itself doesn't change.

Returning veteran could sign away his right to sue

A returning veteran can waive his right to sue his employer for firing him, says a federal appeals court in Ohio.

The employee worked at IBM. He left to serve in Afghanistan and later returned to his old job, but was fired after several months. At the time, he signed a waiver of his legal claims against the company in return for a $6,000 severance package.

However, he later sued under a federal law that requires employers to re-integrate returning veterans into their workplace.

The employee argued that the federal law trumped his agreement, and that it would be wrong to let companies use severance offers as a tool to induce veterans to waive their rights.

But the court sided with IBM and said the waiver agreement was valid.