

Violation of GINA Leads to Significant Jury Verdict Against Employer

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Have you ever had a mystery employee defecating around your warehouse, damaging goods? Have you ever considered asking employees to provide cheek cell samples to determine the identity of the defecator? Hopefully, the answer to both questions is no. One Georgia employer, however, was not so lucky.

Atlas Logistics Group Retail Services out of Atlanta operated a retail grocery warehouse. Apparently, it was discovered that someone was defecating on the floor of the warehouse and causing damage to grocery goods. Presumably, no one stepped up to the plate and took credit for this heinous act, and therefore, the employer took it upon itself to demand saliva samples from all of its employees, by way of a cheek cell swab, in order to figure out who the perpetrator was. The employer did not, however, apprise employees of their rights under the Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff, et seq.

Two employees sued, claiming violations of GINA on the grounds that the employer was not permitted to request genetic information from its employees. The parties filed joint motions for summary judgment, and the Court concluded that the information requested and obtained by the employer was, in fact, “genetic information,” and granted the employees’ motion for partial summary judgment and denied the employer’s request.

The matter proceeded to trial as to damages only. The employer got hit big. The two employees recovered around \$500,000 total in emotional pain and suffering damages, and the jury imposed punitive damages on the employer in the amount of \$1.75 million for acting with malice or reckless indifference to the employees’ federally protected rights.

This is believed to be the first jury verdict in a GINA case, and the jury came out swinging. Here, the employer was really just trying to find out who this mystery employee was who was engaging in wholly inappropriate conduct in the workplace. But the employer failed to take into consideration the fact that the testing required to determine the identity of these individuals necessarily involved genetic information, and went forward without complying with the law.

Any employer who ever contemplates seeking any genetic information from an employee in connection with any purpose should consult with human resources professionals or legal counsel to obtain guidance, as the

ramifications for failure to comply can be costly.

If you have questions about [Lowe v. Atlas Logistics Group Retail Services \(Atlanta\), LLC No. 13-2425 \(N.D. Ga. June 22, 2015\)](#), please contact Amy K. Jensen.

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