

Genetic Testing

Senate Set to Pass Legislation On Genetic Discrimination After Recess

The Senate will vote Oct. 14 on a bill (S. 1053) that would bar employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions, Senate Majority Leader Bill Frist (R-Tenn.) announced Oct. 3.

The vote will be the first order of business in the Senate when it returns from a week-long recess beginning Oct. 3. The measure also would apply to health insurers, preventing them from using individuals' genetic information to deny coverage or determine rates or premiums.

The bill is expected to pass by an overwhelming vote. Senate leaders had originally planned to pass the legislation on a voice vote Oct. 3, but they bowed to requests from some senators to hold a roll-call vote on the measure, according to a senior aide for the Senate Health, Education, Labor, and Pensions Committee.

Passage of the bill will cap six years of negotiations among several lawmakers, Frist said on the Senate floor Oct. 2. "While genetic discrimination may not be widespread at this point in time, this legislation ensures that discriminatory practices will never become common practice," he said.

The House will likely move more slowly in taking up a genetic bias bill. Senate leaders hope the House committees with jurisdiction over the bill will use the Senate bill as a starting point, according to a senior GOP aide, but there has been no indication that House members will do so.

Further complicating the issue, the bill must be passed in two committees in the House--the House Education and the Workforce Committee and the House Energy and Commerce Committee. In the Senate, the bill only needed approval from the Senate Labor Committee before moving to the floor.

Business Community Still Nervous

The business community has been heavily involved in crafting the legislation in an attempt to curtail employers' liability from potential complaints. As the bill was being drafted in committee, employers insisted they should not be made liable for genetic information that they unwittingly learned about employees.

Dubbed "the water cooler problem," the bill currently states that if employers "inadvertently" gains genetic information--i.e., in a conversation about an

employee's sick mother at the water cooler--they would not be considered in violation of the law.

Employers are still nervous about the legislation, even though they say the current bill is a vast improvement over earlier genetic discrimination proposals that would have allowed unlimited damages for plaintiffs, among other things. An industry lobbyist told BNA that passing a genetic bias bill makes little sense without a body of evidence stating that employers actually discriminate against employees based on their genetic information.

Frist attempted to answer such complaints in his floor remarks. "Any concerns about new regulations on employers or health plans are far outweighed by the benefits of scientific advances that will further revolutionize the medical field," he said.

Genetic Information Defined

The bill would bar employers from making personnel decisions based on an employees' or job applicants' genetic information, which is defined as information about a person's genetic tests, a family member's genetic tests, or "the occurrence of a disease or disorder in family members of the individual." Those provisions also apply to employment agencies, labor organizations, and training programs.

The proposal also would protect employees from adverse employment actions stemming from use of "genetic services," which are defined in the bill as genetic tests, counseling services, or education. Employers also would be prohibited from requesting or requiring genetic information from employees and job applicants under the bill. If they possess such information, they would be required to keep it confidential.

The bill would not apply to "manifested" medical conditions. The measure contains language stating that employers would not be in violation of the measure if they use, acquire, or disclose medical information about "a manifested disease, disorder, or pathological condition," even if that condition "has or may have a genetic basis."

Plaintiffs who sue for genetic bias under the bill would be able to seek the same remedies that are available under the Americans with Disabilities Act. Under the ADA, damages for individuals are capped at \$300,000.

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