



ADMINISTRATIVE RULES OF MONTANA

2.21.6613 RECORDS CONTAINING GENETIC INFORMATION

- (1) The federal Genetic Information Nondiscrimination Act (GINA) provides that the following records contain genetic information:
 - (a) an individual's genetic tests, including genetic tests done as part of a research study;
 - (b) genetic tests of an individual's family members;
 - (c) genetic tests of any fetus of an individual or family member who is a pregnant woman, and genetic tests of any embryo legally held by an individual or family member utilizing assisted reproductive technology;
 - (d) an individual's family medical history; and
 - (e) any request for, or receipt of, genetic services or participation in clinical research that includes genetic services (genetic testing, counseling, or education).
- (2) Examples of frequently used employee personnel records that may contain genetic information include Family and Medical Leave Act (FMLA) request forms, reasonable accommodation requests, medical certifications, medically fit for duty forms, and records relating to worker's compensation claims and employee participation in wellness programs.
- (3) Genetic records do not include:
 - (a) information about the sex or age of an individual or family members;
 - (b) information about the race or ethnicity of an individual or family member that is not obtained from a genetic test;
 - (c) information about an employee's disease that is already manifested or diagnosed;
 - (d) routine tests such as blood count, cholesterol, or liver-function tests; and
 - (e) analysis of infectious agents such as bacteria, viruses, and fungi.
- (4) GINA prohibits the collection of genetic information, except in specific instances. For exceptions to obtaining genetic information, refer to:
 - (a) the Family and Medical Leave Policy
(<https://montana.policytech.com/docview/?docid=428&public=true&fileonly=true>);
 - (b) the Sick Leave Policy
(<https://montana.policytech.com/docview/?docid=175&public=true&fileonly=true>);

- (c) the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy (ARM Title 2, chapter 21, subchapter 40); and
- (d) the Reasonable Accommodations and Equal Access Policy (ARM Title 2, chapter 21, subchapter 41).

Authorizing statute(s): 2-18-102, MCA

Implementing statute(s): 2-18-102, MCA

History: NEW, 2010 MAR p. 1070, Eff. 4/30/10; AMD, 2011 MAR p. 2020, Eff. 8/26/11; AMD, 2018 MAR p. 92, Eff. 1/13/18.