Genetic Testing in the Workplace – EEOC Settles Under ADA

Without their knowledge or consent, 36 employees of the Burlington Northern and Santa Fe Railway Company (BNSF) were required to undergo genetic testing. The genetic testing was included in a comprehensive diagnostic medical examination that BNSF required due to employee filed claims or internal reports of work-related carpal tunnel syndrome injuries. The U.S. Equal Employment Opportunity Commission (EEOC) first learned about the genetic tests when several employees filed charges with the agency alleging that BNSF required them to submit to a medical examination which included a blood test for a specific genetic marker, and further alleging that certain employees faced possible discipline for refusing to submit to the medical examination.

The EEOC and BNSF mediated a settlement for $2.2 million. The EEOC's lawsuit alleged that BNSF violated the Americans with Disabilities Act of 1990 (ADA) by genetically testing or seeking to test employees without their knowledge or consent. EEOC Commissioner Paul Steven Miller stated "While the EEOC did not find that BNSF had used genetic tests to screen out employees, employers should be aware of the EEOC's position that the mere gathering of an employee's DNA may constitute a violation of the ADA." The BNSF denies violating the ADA or engaging in any form of workplace discrimination; however, through voluntary mediation the charges with the EEOC were settled. The terms of the settlement include: (1) BNSF has agreed it will not use genetic tests in required medical examinations of its employees in the future, (2) will provide enhanced ADA training to its medical and claims personnel, (3) will have senior management review of all significant medical policies and practices, and (4) pay up to a total of $2.2 million to the employees who were directed to appear for the medical examination for claims related to the genetic tests. The settlement, which is filed in the U.S. District Court for the Eastern District of Wisconsin, is subject to court approval (Equal Employment Opportunity Commission vs. The Burlington Northern and Santa Fe Railway Company - Civil Action File No. 02-C-0456) (*EEOC* 1-3).[13]

[13] *EEOC and BNSF…*