



PRESS RELEASE

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Founders Pavilion Will Pay \$370,000 to Settle EEOC Genetic Information Discrimination Lawsuit

Nursing and Rehabilitation Center Asked for Genetic Information from Employees, Federal Agency Charged

NEW YORK - Founders Pavilion, Inc., a former Corning, N.Y. nursing and rehabilitation center, will pay \$370,000 to settle a discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

The EEOC charged that Founders Pavilion requested family medical history as part of its post-offer, pre-employment medical exams of applicants. The Genetic Information Nondiscrimination Act (GINA), passed by Congress in 2008 and enforced by the EEOC, prevents employers from requesting genetic information or making employment decisions based on genetic information.

The EEOC also alleged that Founders Pavilion fired two employees because they were perceived to be disabled, in violation of the Americans with Disabilities Act (ADA). According to the suit, Founders Pavilion also refused to hire or fired three women because they were pregnant, in violation of the Title VII of the Civil Rights Act of 1964 (Title VII).

The EEOC filed suit in the U.S. District Court for the Western District of N.Y. (*EEOC v. Founders Pavilion, Inc.*, 13-CV-01438), after first attempting to reach a pre-litigation settlement through its conciliation process.

As part of a five-year consent decree resolving the suit, Founders Pavilion will provide a fund of \$110,400 for distribution to the 138 individuals who were asked for their genetic information. Founders Pavilion will also pay \$259,600 to the five individuals who the EEOC alleged were fired or denied hire in violation of the ADA or Title VII.

After the lawsuit was filed, Founders Pavilion sold its Corning, N.Y. nursing facility to Pavilion Operations, LLC d/b/a Corning Center for Rehabilitation and Healthcare and ceased operating any business. If Founders Pavilion resumes conducting business, the consent decree requires Founders Pavilion to post notices and send a memo to employees regarding the lawsuit and consent decree. They will also adopt a new anti-discrimination policy that will be distributed to all employees, provide antidiscrimination training to all employees and provide periodic reports to the EEOC regarding any internal complaints of discrimination.

Pavilion Operations, the buyer of the Corning, N.Y. nursing facility, agreed as a non-party signatory to the consent decree. They will revise their antidiscrimination policies and will include specific references to genetic information discrimination, disability discrimination, and pregnancy discrimination laws and will include a complaint and investigation procedure for employee complaints of discrimination. Pavilion Operations will also provide antidiscrimination training to all of its employees.

"This is our third lawsuit since the enactment of the GINA law and the first one that is systemic," said David Lopez, EEOC General Counsel. "Employers need to be aware that GINA prohibits requesting family medical history. When illegal questions are required as part of the hiring process, the EEOC will be vigilant in ensuring that no one is denied employment opportunities on a prohibited basis."

"Employers should take heed of this settlement because there are real consequences to asking applicants or employee for their family medical history," said EEOC New York District Director Kevin Berry. "The EEOC will pursue these cases to the fullest extent of the law to ensure that such genetic inquiries are never made of applicants or employees."

EEOC Trial Attorney Konrad Batog said, "We are pleased that Founders Pavilion worked with us to resolve this lawsuit and that Pavilion Operations signed onto the consent decree, agreeing to provide its employees antidiscrimination training and revise its antidiscrimination policies. The resolution of this lawsuit should serve as a message and educate employers about genetic information discrimination and help ensure compliance with the laws that the EEOC enforces."

Addressing emerging and developing issues in equal employment law, which includes genetic discrimination, is one of the six national priorities identified by the EEOC's Strategic Enforcement Plan (SEP).

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov.
