

GIPA specifically provides that an employer, employment agency, labor organization, or licensing agency shall not directly or indirectly do any of the following:

- (1) solicit, request, require or purchase genetic testing or genetic information of a person or family member of the person, or administer a genetic test to a person or a family member of the person as a condition of employment, preemployment application, labor organization membership, or licensure;
- (2) affect the terms, conditions, or privileges of employment, preemployment application, labor organization membership, or licensure of any person because of genetic testing or genetic information with respect to the employee or family member, or information about a request for or the receipt of genetic testing by such employee or family member of such employee;
- (3) limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee because of genetic testing or genetic information with respect to the employee or a family member, or information about a request for, or the receipt of genetic testing or genetic information by such employee or family member of such employee; and
- (4) retaliate through discharge or in any other manner against any person alleging a violation of this Act or participating in any manner in a proceeding under this Act. 410 ILCS 513/25(c).

3. GIPA defines “genetic information” as information pertaining to: (i) an individual’s genetic tests; (ii) the genetic tests of family members of the individual; (iii) the manifestation of a disease or disorder in family members of such individual; or (iv) any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

4. Genetic information, including familial medical history, is a uniquely private and sensitive form of personal information. A person cannot change their genome if it becomes compromised, and the genetic information contained therein reveals a trove of intimate information about that person’s health, family, and innate characteristics.

5. However, in requiring disclosure of putative employees' family medical histories, including that of Plaintiff, Defendant has violated Plaintiff's and the other putative Class members' statutory right to genetic privacy.

6. In enacting GIPA, the Illinois Legislature recognized that "[d]espite existing laws, regulations, and professional standards which require or promote voluntary and confidential use of genetic testing information, many members of the public are deterred from seeking genetic testing because of fear that test results will be disclosed without consent in a manner not permitted by law or will be used in a discriminatory manner." *See* 410 ILCS § 513/5(2).

7. GIPA bestows a right to privacy in one's genetic information and a right to prevent the solicitation of, collection, or disclosure of such information without one's consent.

8. In spite of GIPA's prohibition to solicit family medical information, Defendant and other companies in Illinois continue to request that their employees and prospective employees provide protected family medical history in violation of GIPA.

9. Defendant's deprivation of Plaintiffs' statutory rights conferred by GIPA constitutes the actual injuries the Illinois Legislature sought to prevent.

10. Plaintiff brings this action for statutory and/or actual damages, whichever is greater, and other remedies as a result of Defendant's conduct in violating Plaintiff's Illinois genetic privacy rights.

11. On Plaintiff's own behalf, and on behalf of the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with GIPA, as well as an award of damages, including statutory damages under GIPA, to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

12. Defendant First Student, Inc. is a corporation organized under the laws of the state of Delaware and headquartered in Ohio. First Student conducts substantial business throughout Illinois.

13. At all relevant times, Plaintiff has been a resident of the state of Illinois.

JURISDICTION AND VENUE

14. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States because Defendant is doing business within this state, and because Plaintiff's claims arise out of Defendant's unlawful in-state actions, as Defendant directly or indirectly solicited, requested, required, or purchased genetic information of its job applicants or their family members as a condition of applicants' employment or preemployment application.

15. Venue is proper in Cook County because Defendant is an out of state corporation and thus "resides" out of state and can be sued in any county in Illinois pursuant to 735 ILCS § 5/2-101.

COMMON FACTUAL ALLEGATIONS

16. The genomic revolution of recent decades has brought with it great advancements in biological sciences and medicine. Modern genomic technologies allow individuals to gather genealogical information about themselves and their relatives; to discover their genetic predisposition for diseases before any symptoms manifest; and, in some cases, to prevent and treat such diseases.

17. These and other benefits of genomic science have coincided with a rapid decline in the cost of genetic testing. Since the turn of the 21st century, the cost of collecting and analyzing

a complete individual human genome has fallen from more than \$100,000,000 in 2001 to less than \$1,000 in 2022. Despite the benefits to science and health care that could be gained from widespread genetic testing, the Centers for Disease Control expressed counterbalancing concerns related to genetic privacy as early as 1996.

18. As recognized by the CDC and the Illinois Legislature, progress in the field of genomics does not come without risk, and as the benefits and accessibility of genetic testing have grown so too has the potential for abuse and discrimination. To address these and other concerns related to misusing genetic information, Illinois and other states regulate the collection, use and disclosure of such information.

19. In 1998, the Illinois General Assembly enacted the Genetic Information Protection Act (GIPA) 410 ILCS 513/1 et seq. out of recognition that people's genetic information could be used for discriminatory purposes, one of the most harmful of which would occur in the context of employment and the hiring process.

20. Accordingly, GIPA prohibits an employer from directly or indirectly soliciting, requesting, requiring, or purchasing the genetic testing or genetic information of a person or family member of a person as a condition of employment, preemployment application, labor organization membership, or licensure. *See* 410 ILCS § 513/25(c)(1).

21. GIPA's protections include a prohibition against the solicitation, request, requirement, or purchase of employee's or prospective employee's genetic information as a condition of employment. *See* 410 ILCS § 513/25(c)(1).

22. As part of its hiring process, Defendant requires its prospective employees to undergo a physical examination.

23. Defendant's physical examination includes asking its prospective employees questions about the manifestation of diseases in their family members.

24. Over the last decade, Defendant or its agents have performed physical examinations on hundreds of prospective employees, each of which sought familial genetic information in violation of GIPA.

25. Defendant never sought nor received consent to solicit or obtain Plaintiff's or the Class's genetic information, nor did it inform Plaintiff or the Class they had a right not to answer any questions regarding their genetic information.

26. Defendant thus violated GIPA by soliciting and obtaining Plaintiff's and the Class's genetic information as a precondition of employment or preemployment application.

FACTS SPECIFIC TO PLAINTIFF

27. In or around October, 2019, Plaintiff applied for a job at First Student and was subsequently hired by First Student.

28. During the application and hiring process, and as a precondition of her employment and during her pre-employment application process, Defendant required Plaintiff to submit to a physical examination.

29. During the examination, Defendant asked questions concerning Plaintiff's family medical history. Such questions included whether the Plaintiff's family had a history of high blood pressure, diabetes, heart disease, and other genetic information in the form of diseases that had manifested in her family members.

30. By requiring Plaintiff to answer questions about her family medical history, Defendant directly or indirectly solicited, requested, or required Plaintiff to disclose her genetic information.

31. Plaintiff, in response, disclosed her genetic information, including diseases and disorders with which her family members have been diagnosed.

32. Plaintiff was never informed by Defendant, either verbally or in writing of her right to privacy under GIPA or otherwise informed she was not legally obligated to disclose genetic information.

33. By collecting the genetic information of its prospective employees in connection with its application process Defendant illegally solicited and obtained the genetic information of hundreds of Illinois residents and workers, including that of Plaintiff, in violation of GIPA.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and similarly situated individuals pursuant to 735 ILCS § 5/2-801.

35. Plaintiff seeks to represent a Class defined as follows:

All individuals who, during the relevant time period, applied for employment with Defendant in Illinois and from whom Defendant requested or obtained family medical history or other genetic information according to Defendant's records.

36. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officers or directors.

37. Upon information and belief, there are hundreds of members of Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiff, the members can be easily identified through Defendant's records.

38. Plaintiff's claims are typical of the claims of the members of the Class Plaintiff seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the other members of the Class are the same, and because Defendant's conduct has resulted in similar violations to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all been aggrieved by Defendant's GIPA violations.

39. There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendant's conduct is subject to GIPA;
- b. Whether Defendant has treated Plaintiff's and the Class members' genetic information in a manner consistent with state law, including the statutes referenced within 410 ILCS § 513/25(a);
- c. Whether Defendant released Plaintiff's and the other Class members genetic testing information in violation of 410 ILCS § 513/25(b);
- d. Whether Defendant directly or indirectly solicited Plaintiff's and the other Class members' genetic information as a condition of employment or through its preemployment application in violation of 410 ILCS § 513/25(c)(1);
- e. Whether Defendant affected any of the terms, conditions, or privileges of employment or preemployment application of Plaintiff or members of the Class as a result of the genetic information it gathered, in violation of 410 ILCS § 513/25(c)(2);
- f. Whether Defendant has limited, segregated, or classified Plaintiff and the other Class members in any way that deprives or tends to deprive them of employment opportunities or otherwise adversely affected their status as employees, in violation of 410 ILCS § 513/25(c)(3);
- g. Whether Defendant's violations of GIPA were negligent;
- h. Whether Defendant's violations of GIPA were reckless or intentional; and

i. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

40. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

41. Plaintiff will adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so.

42. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to those of the other members of the Class.

43. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the member of the Class and making injunctive or declaratory relief appropriate for the Class as a whole.

COUNT ONE

**Violation of Illinois Genetic Privacy Act, 410 ILCS § 513/1, *et seq.*
(On behalf of Plaintiff and the Class)**

44. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

45. Defendant is a corporation that employs employees within the State of Illinois and is thus an "employer" under GIPA. *See* 410 ILCS § 513/10.

46. GIPA defines “genetic information” by reference to HIPAA as specified in 45 C.F.R. § 160.103 to include the manifestation of a disease or disorder in family members of an individual.

47. As a precondition of their employment, Plaintiff and the Class were given physical exams by medical staff who were employed by Defendant or who were otherwise operating on Defendant’s behalf.

48. During these physical exams, Defendant’s medical staff solicited from Plaintiff and the Class information concerning their family medical history. Defendant thus directly or indirectly required Plaintiff and the members of the Class to disclose their protected genetic information.

49. Plaintiff and the Class also were also asked to provide other personal identifying information, including their full names, email address, and/or home addresses (including age, birthday, Social Security information and gender) to Defendant in their employment applications and during the physical exams they underwent.

50. The information obtained from Plaintiff and the Class by Defendant is the type of information protected by GIPA. *See* 410 ILCS § 513/10.

51. Defendant did not receive any written authorization from Plaintiff or the other Class members to solicit or request their genetic information.

52. Plaintiff and the other Class members have been aggrieved by Defendant’s violations of their statutorily protected rights to privacy in their genetic information as set forth in GIPA when Defendant, in the course of employment, solicited or requested their statutorily protected genetic information.

53. GIPA provides for statutory damages of \$15,000 for each reckless or intentional violation of GIPA or actual damages – whichever is greater – and, alternatively, damages of \$2,500

for each negligent violation of GIPA or actual damages – whichever is greater. 410 ILCS 513/40(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, respectfully request that this Court enter an Order:

- a. Certifying the Class as defined above, appointing Plaintiff as class representative, and appointing Plaintiff’s counsel as class counsel;
- b. Declaring that Defendant’s actions, as set forth herein, violate GIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with GIPA;
- d. Awarding statutory damages of \$15,000 for each reckless or intentional violation of GIPA or actual damages – whichever is greater – pursuant to 410 ILCS 513/40(a)(3);
- e. Awarding statutory damages of \$2,500 for each negligent violation of GIPA or actual damages – whichever is greater – pursuant to 410 ILCS 513/40(a)(3);
- f. Awarding reasonable attorneys’ fees, costs, and other litigation expenses pursuant to 410 ILCS § 513/40(a)(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Such further and other relief the Court deems reasonable and just.

Dated: May 16, 2024

Respectfully submitted,

By: /s/ Michael L. Fradin

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [First Student Violated Illinois Privacy Law by Requesting Job Applicants' Family Medical Histories, Class Action Says](#)
