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# Special Report for HR Professionals

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## EEOC OPINION LETTER ON ADA & GINA CONFIDENTIALITY

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The Equal Employment Opportunity Commission (EEOC) has issued an opinion letter that was published in the Bureau of National Affairs (BNA) EEOC Compliance Manual (July 29, 2011, Number 394).

In it, Peggy R. Mastroianni, Legal Counsel addresses the issue of confidentiality of information under requirements of the *Americans with Disabilities Act (ADA)* and the *Genetic Information Nondiscrimination Act (GINA)*. At issue were two questions: 1) whether an employer or its agent should have access to an employee's personal health information without the employee's consent' and 2) the manner in which employers must safeguard employees' medical information.

In her response, Ms. Mastroianni said, "Neither the ADA nor GINA specifically addresses the need for encryption, password authorization, and other security safeguards for electronic records maintained by employers. However, we do not interpret either statute's confidentiality provisions as applying only to paper records. Therefore, if an employer maintains medical information and genetic information electronically, it must ensure that it is kept confidential, and disclosed only to the extent permitted by the ADA and GINA."

"Title I of the ADA limits when an employer may obtain medical information and how that information can be used at three stages: before extending a job offer, after an offer is made but before an individual starts working, and once a person is on the job...Once an individual begins working, an employer may only ask disability-related questions or require medical examinations that are job related and consistent with business necessity. 29 C.F.R. Sec 1630.14(c)...[It also] provides that information obtained by an employer regarding the medical condition or history of an applicant or employee must be collected on separate forms, kept in separate medical files, and be treated as a 'confidential medical record.' 29 C.F.R. Sec 1630.14(b)(1).

She concludes, "An employer's right to access personal health information about applicants and employees and to allow access to occupational health information by individuals providing health services unrelated to employment is strictly limited under both the ADA and GINA. Therefore, maintaining personal health information and occupational health information in a single EMR [Electronic Medical Record], particularly one that allows someone with access to the EMR to view any information contained therein, presents a real possibility that the ADA, GINA, or both will be violated."

## MASTERING INNOVATIVE LEADERSHIP

By Alexander Hiam

**PART #3**

[This is an article in three parts. This part continues from the August 12<sup>th</sup> Issue of *Special Reports for HR Professionals*.]

Positive statements indicate that you're:

- Hopeful about finding solutions to problems
- Enthusiastic about the possibility of discovering, creating, or inventing something new
- Open to ideas and options and interested in learning something new
- Positive people express their optimism through their body language. They have:
  - A buoyant stride and energetic movements
  - An open, relaxed posture
  - An interested facial expression when others are making suggestions

If you find it hard to sound and act like an irrepressible optimist, you may need to revitalize your own attitude before you go around sharing it with others. It's a happy fact of leadership that you have an obligation to be in a positive, energetic frame of mind.

Take the time to figure out what rituals and lifestyle changes you need to make in order to come to work each day full of optimism and energy, so you can naturally role-model and spark that kind of energy for your whole team. For example, adopt an exercise regime during lunch hour if it gives you positive energy.

### **What To Do On A Bad Day**

On days when optimism just isn't there and you feel down, stay away from your team if at all possible. Go out and recharge yourself before you interact with them, so as not to contaminate their attitudes. The leader's attitude spreads more powerfully and rapidly than anyone else's, so take advantage of the leverage your attitude has over others — and please don't make the all-too-common mistake of amplifying your bad mood by sharing it at work.

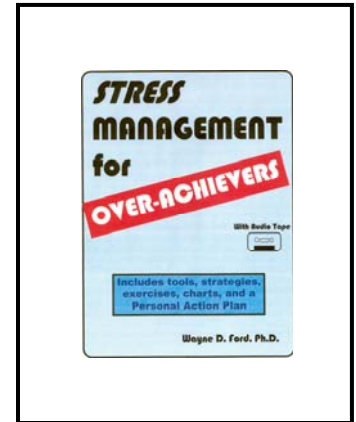
Alexander Hiam is a leading innovation expert and the author of more than 20 books on innovation, marketing and creativity, including *Business Innovation for Dummies* (Wiley, June 2010)

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## Stress Management for Over Achievers

Anyone who has worked hard to get a senior HR management position (or any other management position for that matter) has encountered a fair amount of job stress. Dealing with that can sometimes become burdensome. Here is a tool to help you avoid burnout, and keep the gears turning on your job.

<http://www.management-advantage.com/products/achievestress-book.htm>



## POTPOURRI

- **USCIS E-Verify Self Check Expands**

The U.S. Citizenship and Immigration Services (USCIS) E-Verify Self Check program has been expanded to include more states and Spanish language content. Self Check is an online service by the agency to allow individuals to verify their employment eligibility status according to government records. You should be aware that the service accesses individual credit rating report information using third-party data bases. If that credit access is not available for any reason, including a freeze on access placed by the individual, then self check will not produce a response about eligibility.

[www.uscis.gov/EVerifySelfCheck](http://www.uscis.gov/EVerifySelfCheck)

- **NLRA Poster Requirement Effective November 14, 2011**

The National Labor Relations Board (NLRB) has issued a new regulation requiring most private sector employers to display a new poster (minimum size 11" X 17") telling all employees their rights under the *National Labor Relations Act (NLRA)*. We offer a laminated version and a bi-lingual English and Spanish combination if 20% or more of your workforce doesn't speak English and does speak Spanish.

[www.hrwebstore.com/products/posters/NLRAEmployeeRightsPoster.htm](http://www.hrwebstore.com/products/posters/NLRAEmployeeRightsPoster.htm)

- **DOL Offers Help With Customized Employment Situations**

The Department of Labor offers help to employers at <http://www.dol.gov/dol/media/webcast/20110610-odep-ce/20110610-odep-ce-2.htm> Disability accommodation is one application.

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## NO MORE U.S. SAVINGS BOND SALES AT BANKS

Effective January 1, 2012 the U.S. Department of the Treasury will end its sale of U.S. savings bonds through financial institutions. You will no longer be able to walk into a bank and buy a paper savings bond across the teller's counter. Neither will you be able to redeem savings bonds that way.

All sales and redemptions of U.S. savings bonds will be conducted online via the Department's Public Debt Bureau at <http://www.publicdebt.treas.gov/>.

What's the significance of the change?

Sales and redemption authority for U.S. savings bonds was one of the criteria that subjected financial institutions to the jurisdiction of the Office of Federal Contract Compliance Programs (OFCCP) and triggered the need for a written affirmative action plan for minorities and women. The OFCCP regulations still contain that requirement, but it will be a moot point after the first of next year because of the change made by Treasury.

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