

Legal Connections



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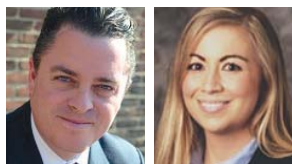
MAY 24, 2019

GENETIC TESTING AND THE FOURTH AMENDMENT

It is reported that more than 7 million Americans have taken a direct-to-consumer (DTC) genetic DNA test offered by companies such as Ancestry.com and 23andMe. Upon purchasing a DNA kit, consumers are able to directly send DNA samples—usually saliva—to the company, where the sample is tested to provide insights about ancestry, wellness and the likelihood of developing certain types of disease. However, once these third-party companies obtain this very sensitive information, it does not remain private.

The proliferation of DTC genetic testing has created a lucrative market for public genealogy databases such as GEDmatch, which allow people to anonymously upload their genetic testing results for further ancestry research and evaluation.

When a person voluntarily submits their DNA sample to a DTC genetic testing company, there are very few regulations protecting the privacy interests of these customers. In the context of the Fourth Amendment to the Constitution, customers are generally deemed to waive their Fourth Amendment protections against warrantless searches and



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seizures when they willingly share their DNA material with DTC genetic testing companies or public genealogy websites. This is because, under third-party doctrine, law enforcement officers do not need a warrant to search genetic databases like GEDmatch, as the individual has voluntarily provided information to a third-party entity that publicly shares the information provided. On the other hand, law enforcement officers would likely need to obtain a warrant to search a genetic testing company's records, as these records are not publicly available.

Notably, the 2018 Supreme Court decision in *Carpenter v. United States*, 138 S. Ct. 2206 (2018)—which prohibited the warrantless searches of cellphone

location data provided to third-party cellphone network providers on the grounds of Fourth Amendment privacy concerns—may be applicable in this context. Indeed, it is likely the Carpenter ruling will apply to extremely sensitive information—such as genetic data—notwithstanding the fact that such information was voluntarily provided to a third-party entity.

Some genealogy database companies are now explicitly offering to conduct forensic searches for law enforcement. Moreover, Ancestry.com's expressly states that it will use your genetic information for "conducting scientific, statistical, and historical research." It cautions: "We use other companies to help us provide the Services to you. As a result, these partner companies will have some of your information in their systems. Our partners are subject to contractual obligations governing data security and confidentiality consistent with this Privacy Statement and applicable laws. These processing partners include our: Laboratory partners; DNA test shipping providers; Payment processors; Cloud services infrastructure providers; Biological sample storage

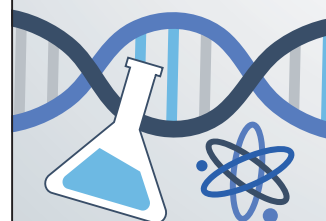
"Your privacy is important. Make sure that you fully understand how your data will be used in order to protect yourself from unintended consequences."

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TWENTY-SIX MILLION

people have sent their DNA to commercial ancestry and health databases



Source: MIT Technology Review, 2019

facilities; Vendors that assist us in marketing; analytics, and fraud prevention; and, Some Member Services functions."

While understanding who your ancestors may have been and collecting information regarding your personal health profile may be incredibly valuable, the use of DNA databases to identify individuals who have not consented to sharing their genetic information with third-party companies raises serious genetic privacy and Fourth Amendment concerns. ■

Join us for an engaging discussion of Rachel Louise Snyder's intimate investigation of the true scope of domestic violence on June 5. Register now at cbalaw.org

EMPLOYERS: PAY YOUR EMPLOYEES' WORKERS' COMPENSATION CLAIMS OR PAY BIG

Injuries at work happen. How employers respond to workplace injuries is the key.

As part of workers' compensation's no-fault system, injured workers in the state of Ohio need only show that the injury occurred at work or was caused by work activities. To support these claims, Ohio law requires employers with one or more employees to possess workers' compensation insurance, either by contributing to the Ohio State



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Insurance Fund or by insuring themselves according to the state mandated guidelines.

Problems arise when employers fail to comply with this legal mandate. Should an employer fail to pay employees' workers' compensation claims after a final adjudication in the employee's favor, the

employee is entitled to seek funds set aside by the state. The Ohio Bureau of Workers' Compensation may then take

legal action against non-complying employers, which can include placing a lien on employer-owned property, assessing penalties against non-compliant employers or even subjecting the employer to both criminal and civil liability. For example, Ohio Courts have ordered that non-complying employers serve jail time for felony convictions of workers' compensation fraud and tampering with records, pay hundreds of thousands of dollars in restitution to the Ohio Bureau of Workers' Compensation and/or pay tens of thousands of dollars to the Ohio Bureau of Workers

Compensation for investigative costs.

Ohio's workers' compensation laws serve the purpose of providing injured workers the time and resources they need to recover and return to the workforce. The laws promote business by boosting employee morale, promoting workplace safety and protecting the employer's business. Accordingly, it is imperative that employers establish workers' compensation insurance coverage and pay their employee's claims in accordance with the law. ■



THE NEW NOTARY LAW: *What's in it?*

Ohio's new notary law allows for electronic notarization and will change the requirements for becoming a notary public. How will this impact your business? Plan to attend "**Electronic Notary: Understanding the Provisions of the New Law**" at the Columbus Bar on June 19 from 3-5pm. Register at www.cbalaw.org.



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