specifically prohibiting (in most cases) insurers from denying coverage based on the results of genetic testing and for using those tests to determine insurance rates and health benefits.[7]

There was also the 1990 Americans with Disabilities Act (ADA), which barred adverse employment decisions based on an individual's actual physical or mental disabilities and was designed to protect people with mental or physical impairments from discrimination. To be considered disabled, one had to have a physical or mental disability that limited the ability to perform at least one major life activity, such as walking. An individual could be covered under ADA if he or she had a history of disability, such as having had cancer, or the perception of having a disability, such as having a gene for a disease but not yet showing symptoms.

Under the ADA, disabled employees could not be dismissed from a job if they performed "with reasonable accommodation." For example, an employee whose job was answering the phone and who was hard of hearing could not be dismissed. Under the law, an employer must accommodate that employee by providing, for example, a phone amplifier. On the other hand, if the only job available in a workplace was highly physical and required mobility and the employee was wheelchair-bound or otherwise physically constrained, the company could fire that worker with no repercussions. In the latter situation, the law was on the employer's side given that accommodating such a person could subject that business to undue hardship.

High cost was a deterrent to employers using genetic testing as part of the application process; in 2004, a genetic test cost approximately $1,000. Still, some people envisioned a future where those tests were a routine part of screening potential employees. In 2000, the American Management Association reported that approximately 70% of major employers required medical testing in the job-seeking process, and a handful of those companies were "already doing genetic testing, for sickle cell anemia, breast and colon cancer, and susceptibility to workplace hazards."[8] Many employers also required a family medical history, which often gave clues as to what diseases a potential employee had inherited.

One specific incident revealing how the ADA offered protection involved a dental school graduate who had a late-onset form of Tay-Sachs disease, a fatal genetic disorder usually afflicting children that causes progressive destruction of the central nervous system. The dental graduate was competent both physically and mentally, but was at increased risk of developing muscle weakness, movement disorders, and possibly early-onset dementia. Claiming that she posed a serious risk to her patients, the state licensing board denied her a license to practice dentistry. The board noted that the ADA permitted application denial if an applicant "poses a direct threat to the health and safety of others."[9] Interpretation of the regulations implementing the ADA, however, stated that the concerns for the health and safety of others must be balanced against the "goal of protecting disabled individuals from discrimination."[10] The interpretation

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[7] "Genetic Discrimination," Los Angeles Caregiver Resource Center, http://geroweb.usc.edu/lacrc/Diseases/FactSheets/genetic.htm (accessed 12 February 2006)

[8] Hoffman, 6.

[9] ADA Section 302[b][3], 56 Fed. Reg. 35701.

[10] ADA.