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Volume 34 | Issue 57 | July 20, 2011

EEOC Proposes Recordkeeping Requirements Under the Genetic Information Nondiscrimination Act of 2008

On June 2, 2011, the EEOC proposed extending its existing recordkeeping requirements under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act to entities covered by the employment provisions of the Genetic Information Nondiscrimination Act.

Background

The Genetic Information Nondiscrimination Act of 2008 (GINA) was signed into law on May 21, 2008. (See our May 27, 2008 [For Your Information](#).) Title II of GINA prohibits employers with 15 or more employees and other covered entities from discriminating against job applicants, current and former employees, and their families on the basis of genetic information. The Equal Employment Opportunity Commission (EEOC) final regulations implementing the employment-related provisions took effect on January 10, 2011. (See our February 1, 2011 [For Your Information](#).)

EEOC recordkeeping [regulations](#) under Title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) require employers to preserve all employment and personnel records made or kept for a period of one year after making the record or taking the personnel action, whichever occurs later. If an employee is involuntarily terminated, the employer must keep the individual's employment records for a period of one year following the termination date.

Once a discrimination charge is filed, or the EEOC or Attorney General brings an action, under Title VII or the ADA, the employer must keep all personnel records relevant to the charge or action until its final disposition. Such records would include, for example, personnel or employment records relating to the charging party and to all other employees holding or seeking positions similar to that held or sought by the aggrieved individual(s).

If the charging party receives a right to sue notice but does not sue, final disposition means the end of the 90-day statutory period within which he or she could have brought suit in federal court. When an action is brought by the charging party or the EEOC, final disposition is the date on which the litigation ends, including any appeals.

BUCK COMMENT. *Other federal laws impose additional recordkeeping requirements on employers. For example, under the Age Discrimination in Employment Act (ADEA), employers must keep all payroll records for at least three years. Employers also must keep on file any employee benefit plan (such as pension and insurance plans) and any written seniority or merit system for the full period the plan or system is in effect and for at least one year after its termination.*

Proposed Regulations

On June 2, 2011, the EEOC issued [proposed regulations](#) that would extend its recordkeeping requirements under Title VII and the ADA to employers and other entities covered under GINA Title II. To accomplish that, the EEOC would amend its recordkeeping regulations that currently apply to an EEOC charge filed under Title VII or the ADA to add references to a charge filed under GINA. Thus, employers would have to preserve any employment records made or kept for one year or until any discrimination charge brought under GINA has reached final disposition, whichever period is longer.

Although the proposal would require employers to maintain the records they create, it would not require the creation of additional documents. The proposed regulations would not impose any reporting requirements under GINA. However, the EEOC has expressly reserved the right to issue any necessary reporting regulations in the future.

Conclusion

Employers should review their existing record retention system for Title VII and ADA charges and ensure that they will readily be able to identify and preserve records relating to GINA charges should the proposed regulations become effective.

Buck's consultants would be pleased to review your recordkeeping practices and assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.