



For your information

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## EEOC Extends Title VII Recordkeeping Requirements to GINA

On February 3, 2012, the EEOC issued final regulations 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 of 2008. The regulations take effect on April 3, 2012.

### Background

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers with 15 or more employees and other covered entities from discriminating against job applicants, current and former employees, labor union members, apprentices, and trainees on the basis of genetic information. (See our May 27, 2008 [For Your Information](#).) The Equal Employment Opportunity Commission's (EEOC's) regulations implementing Title II's employment provisions took effect on January 10, 2011. (See our February 1, 2011 [For Your Information](#).)

Although the Title II regulations require employers to treat genetic information in their possession confidentially, they do not impose broader recordkeeping obligations. On June 2, 2011, the EEOC [proposed](#) the extension of existing recordkeeping requirements under Title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) to employers and other entities covered under GINA Title II. (See our July 20, 2011 [For Your Information](#).)

### Final Regulations

On February 3, 2012, the EEOC issued [final regulations](#) amending its recordkeeping rules to impose the same retention requirements under GINA that currently apply under Title VII and the ADA. The final regulations, effective April 3, 2012, adopt the previously proposed regulations without change.

The final EEOC recordkeeping regulations require employers subject to Title VII, the ADA, or GINA to preserve all employment and personnel records made or kept for a period of one year from the date the record is made or the personnel action is taken, whichever is later. In the case of an involuntary termination, the employer must keep the individual's employment records for a period of one year following the termination date.

A different rule applies for records relating to a discrimination charge filed with the EEOC, or a civil action brought by the EEOC or the Attorney General, under Title VII, the ADA, or GINA. In such cases,

the employer will have to preserve all employment records relevant to the EEOC charge or action until its final disposition. Such records could include, for example, requests for reasonable accommodation, application forms, promotion lists, and pay records relating to the charging party and to other employees holding or seeking positions similar to that held or sought by the aggrieved individual(s).

The final regulations require employers to maintain the records they create. However, they do not require the creation of additional documents or impose any reporting requirements under GINA.

#### INSIGHT

Because other federal laws, such as the Age Discrimination in Employment Act, impose additional recordkeeping requirements, employers will want to make sure that their record retention policies also take those into account.

#### Conclusion

Employers should review their current recordkeeping policies and practices, assess their record retention protocols, and evaluate both manual and electronic systems to ensure that they will be compliant when the final regulations take effect on April 3, 2012.

#### Buck Can Help

- Review recordkeeping policies and practices
- Develop and maintain appropriate recordkeeping systems
- Train managers and supervisors on best practices

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.  
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