

Rules and Regulations

Federal Register

Vol. 89, No. 33

Friday, February 16, 2024

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046-AB26

2024 Adjustment of the Penalty for Violation of Notice Posting Requirements

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule adjusts for inflation the civil monetary penalty for violation of the notice-posting requirements in Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Genetic Information Non-Discrimination Act, and the Pregnant Workers Fairness Act.

DATES: This final rule is effective February 16, 2024.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, (202) 921-2665 or kathleen.oram@eoc.gov, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M St. NE, Washington, DC 20507. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 921-3191 (voice) or 1-800-669-6820 (TTY), or 1-844-234-5122 (ASL video phone).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 711 of the Civil Rights Act of 1964 (Title VII), which is adopted by reference in section 105 of the Americans with Disabilities Act (ADA), section 207(a)(1) of the Genetic Information Non-Discrimination Act (GINA), and section 104(a)(1) of the Pregnant Workers Fairness Act (PWFA), and implemented by the Equal Employment Opportunity Commission

(EEOC) in 29 CFR 1601.30(a), every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program covered by Title VII, ADA, GINA, or PWFA, must post notices describing the pertinent provisions of these laws. Covered entities must post such notices in prominent and accessible places where they customarily maintain notices to employees, applicants, and members. 29 CFR 1601.30(a). Failure to comply with this posting requirement is subject to a monetary penalty. 29 CFR 1601.30(b).

Section 5(b) of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act),¹ which amended the Federal Civil Penalties Inflation Adjustment Act of 1990, requires the EEOC to annually adjust the amount of the penalty for non-compliance. Under the 2015 Act, the EEOC has no discretion over whether or how to calculate this inflationary adjustment. In accordance with section 6 of the 2015 Act, the EEOC will apply the adjusted penalty only to those assessed after the effective date of the adjustment.

II. Calculation

The adjustment set forth in this final rule follows guidance under the 2015 Act from the Office of Management and Budget (OMB)² and is calculated by comparing the Consumer Price Index for all Urban Consumers (CPI-U) for October 2022 with the CPI-U for October 2023, resulting in an inflation adjustment factor of 1.03241. The inflation adjustment factor (1.03241) was multiplied by the most recent civil penalty amount (\$659) to calculate the inflation-adjusted penalty level (\$680.35819), which is then rounded to the nearest dollar (\$680). Accordingly, the Commission is now adjusting the maximum penalty per violation specified in 29 CFR 1601.30(b) from \$659 to \$680.

¹ Public Law 114-74, Sec. 701(b), 129 Stat. 599.

² Memorandum from Shalanda D. Young, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M-24-07, Dec. 19, 2023, M-24-07 at 1 (“[b]ased on the Consumer Price Index (CPI-U) for the month of October 2023, not seasonally adjusted, the cost-of-living adjustment multiplier for 2024 is 1.03241”).

III. Regulatory Procedures

Administrative Procedure Act

The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures where an agency finds good cause for dispensing with such procedures, on the basis that they are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). The Commission finds that this rule meets the exception because the 2015 Act requires an inflationary adjustment to the civil monetary penalty, it prescribes the formula for calculating the adjustment to the penalty, and it provides the Commission with no discretion in determining the amount of the published adjustment. Accordingly, the Commission is issuing this revised regulation as a final rule without notice and comment.

Executive Order 12866

This rule is not a significant regulatory action as that term is defined in Executive Order 12866. The inflationary adjustment’s cumulative impact on the violations found each year falls well below the \$200 million threshold for significant regulatory action under E.O. 12866, as revised by E.O. 14094, and it otherwise fails to meet the definition of a significant regulatory action.

Paperwork Reduction Act

This final rule contains no new information collection requirements, and therefore, will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) only requires a regulatory flexibility analysis when the APA requires notice and comment procedures, or the agency otherwise issues such a notice. As stated above, notice and comment is neither required nor being used for this rule. Accordingly, the Regulatory Flexibility Act does not apply.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the

private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501–1571).

Congressional Review Act

This regulation is a rule subject to the Congressional Review Act (CRA) (5 U.S.C. 801–808), but is not a “major” rule that cannot take effect until 60 days after it is published in the **Federal Register**. Therefore, the EEOC will submit this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the effective date of the rule.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure.

For the Commission.

Charlotte A. Burrows,
Chair, Equal Employment Opportunity Commission.

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR part 1601 as follows:

PART 1601—PROCEDURAL REGULATIONS

- 1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11; 28 U.S.C. 2461 note, as amended; Pub. L. 104–134, Sec. 31001(s)(1), 110 Stat. 1373.

- 2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

§ 1601.30 Notices to be posted.

* * * * *

(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation Adjustment Act, as amended, make failure to comply with this section punishable by a fine of not more than \$680 for each separate offense.

[FR Doc. 2024–03177 Filed 2–15–24; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601 and 1626

RIN 3046–AB32

Congressional Disapproval of Update of Commission’s Conciliation Procedures

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; Congressional Review Act revocation.

SUMMARY: Pursuant to their authority under the Congressional Review Act (CRA), Congress passed, and the President signed, a joint resolution disapproving the Equal Employment Opportunity Commission’s (EEOC or Commission) final rule titled “Update of Commission’s Conciliation Procedures.” Under the joint resolution and by operation of the CRA, this rule has no legal force or effect. The Commission hereby is removing it from the Code of Federal Regulations.

DATES: This final rule is effective February 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Kathleen Oram, Assistant Legal Counsel, Office of Legal Counsel, at kathleen.oram@eeoc.gov or (202) 921–2665 (voice). Requests for this document in an alternative format should be made to the EEOC’s Office of Communications and Legislative Affairs at (202) 921–3191 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).

SUPPLEMENTARY INFORMATION: On October 9, 2020, the Commission published a notice of proposed rulemaking (NPRM) in the **Federal Register**, proposing amendments to its procedural rules governing the conciliation process (85 FR 64079). The Commission published the final rule, titled “Update of Commission’s Conciliation Procedures,” in the **Federal Register** on January 14, 2021 (86 FR 2974) (“Final Rule”). The Final Rule outlined the information that the Commission must provide when undertaking conciliation efforts for charges alleging violations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA), the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Age Discrimination in Employment Act of 1967 (ADEA). The Final Rule became effective on February 16, 2021.

On May 19, 2021, the United States Senate passed a joint resolution (S.J. Res. 13) disapproving the Final Rule under the Congressional Review Act

(CRA) (5 U.S.C. 801 *et seq.*). The United States House of Representatives passed S.J. Res. 13 on June 24, 2021. The President signed the joint resolution into law as Public Law 117–22 on June 30, 2021. Under Public Law 117–22 and by operation of the CRA, the Final Rule has no force or effect. Accordingly, the Commission is hereby removing the Final Rule from the Code of Federal Regulations (CFR).

This action is not an exercise of the Commission’s rulemaking authority under the Administrative Procedure Act (APA) because the Commission is not “formulating, amending, or repealing a rule” under 5 U.S.C. 551(5). Rather, the Commission is effectuating a change to the Code of Federal Regulations to reflect what congressional and presidential action already has accomplished. Accordingly, the Commission is not soliciting comments on this action, nor is it delaying the effective date.

List of Subjects in 29 CFR Parts 1601 and 1626

Administrative practice and procedure, Equal employment opportunity.

For the reasons set forth above, and pursuant to the CRA (5 U.S.C. 801 *et seq.*) and Public Law 117–22, the Equal Employment Opportunity Commission amends 29 CFR parts 1601 and 1626 as follows:

PART 1601—PROCEDURAL REGULATION

- 1. The authority citation for 29 CFR part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11; 28 U.S.C. 2461 note, as amended; Pub. L. 104–134, Sec. 31001(s)(1), 110 Stat. 1373.

§ 1601.24 [Amended]

- 2. Amend § 1601.24 by removing paragraphs (d), (e), and (f).

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

- 3. The authority citation for 29 CFR part 1626 continues to read as follows:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

- 4. Revise § 1626.12 to read as follows:

§ 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

Upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice