

Proposed Rules

Federal Register

Vol. 89, No. 225

Thursday, November 21, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

RIN 3046-AB35

Recordkeeping and Reporting Requirements Under Title VII, the ADA, GINA, and the PWFA

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking; hearing.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) proposes to amend the language of its existing recordkeeping regulations under title VII of the Civil Rights Act of 1964 (title VII), the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA) to add references to the Pregnant Workers Fairness Act (PWFA). The PWFA requires covered employers to provide reasonable accommodations to a qualified applicant's or employee's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. The PWFA adopts by reference the statutory recordkeeping provision of title VII, which authorizes the existing EEOC recordkeeping regulations.

DATES: Written comments must be received on or before January 21, 2025. Pursuant to 42 U.S.C. 2000e-8(c), a public hearing concerning these proposed changes will be held at a place and time to be announced. To request an opportunity to speak about your views at the hearing, please submit a written request in accordance with the instructions in the **SUPPLEMENTARY INFORMATION** section no later than December 23, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by RIN 3046-AB35, by any of

the following methods—please use only one method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions on the website for submitting comments.
- **Fax:** Comments totaling six or fewer pages may be sent by fax machine to (202) 663-4114. Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 921-2815 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL Video Phone).
- **Mail:** Comments may be submitted by mail to Raymond Windmiller, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.
- **Hand Delivery/Courier:** Raymond Windmiller, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the Regulatory Information Number (RIN) for this rulemaking. The EEOC will post all comments received without change to <https://www.regulations.gov>, including any personal information you provide. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race; color; sex; national origin; age; religion; disability; or genetic information; or that promote or endorse services or products.

Docket: To read the public comments received by the EEOC, go to <https://www.regulations.gov> and search for this item. There may be a few days' delay between submission of a comment and public posting on this docket. The received comments also will be available for review on a computer in the Commission's Headquarters library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9 a.m. and 4:30 p.m. on days the Commission is open for business. You must make an appointment with library staff to review the comments in the Commission's library by contacting 202-921-3119.

FOR FURTHER INFORMATION CONTACT:

Raymond Peeler, Associate Legal Counsel, (202) 921-3240 (voice); (800) 669-6820 (TTY), Office of Legal Counsel, 131 M Street NE, Washington, DC 20507. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 921-3191 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL).

SUPPLEMENTARY INFORMATION: The Pregnant Workers Fairness Act (PWFA)¹ became law on December 29, 2022, and took effect on June 27, 2023. The PWFA requires a covered employer to provide reasonable accommodations for a qualified employee's or applicant's known limitations related to pregnancy, childbirth, or related medical conditions, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's operation of the business.² In the PWFA's enforcement section,³ Congress adopted by reference the statutory "powers, remedies, and procedures" of sections 705, 706, 707, 709, 710, and 711 of title VII.⁴ Specifically, section 709(c) of title VII provides that, with respect to "records relevant to the determinations of whether unlawful employment practices have been or are being committed":

"Every [covered entity] subject to this subchapter shall . . . (2) preserve such records for such periods . . . as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder."

Pursuant to this authority, the Commission has issued recordkeeping regulations at 29 CFR part 1602.

On February 14, 2024, the EEOC issued an interim final rule implementing changes to its administrative and procedural regulations to include references to the PWFA in a rule found at 89 FR 11167.⁵ The interim final rule, as corrected on May 28, 2024, did not revise four sections of 29 CFR part 1602 that

¹ 42 U.S.C. 2000gg *et seq.*

² 42 U.S.C. 2000gg-1.

³ 42 U.S.C. 2000gg-2.

⁴ 42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9, and 2000e-10.

⁵ The EEOC has also issued regulations to implement the PWFA, pursuant to section 105 of the statute, 42 U.S.C. 2000gg-3(a) (see 89 FR 29096).

pertain to recordkeeping, because revisions to those recordkeeping provisions require approval under the Paperwork Reduction Act of 1995 (PRA),⁶ as well as the opportunity for a public hearing pursuant to 42 U.S.C. 2000e–8(c) (as incorporated into the PWFA by 42 U.S.C. 2000gg–2).⁷ Through the current rulemaking, the EEOC is proposing to add express references to the PWFA to these four recordkeeping provisions, in conformance with the PRA and the statutory requirement that the EEOC hold a public hearing as a condition of imposing recordkeeping obligations.

This rulemaking proposes to amend § 1602.14, covering private employers; § 1602.21(b), covering employers, labor organizations, and joint labor-management committees that control apprenticeship programs; § 1602.28(a), covering labor organizations; and § 1602.31, covering State and local governments. Under these existing recordkeeping requirements, these entities already must preserve records “made or kept”⁸ by that covered entity for one year (private employers and labor organizations) or two years (apprenticeship programs and public sector) and must continue to preserve any records relevant to charges filed under title VII, the ADA, or GINA until final disposition of those matters. The proposed rulemaking would expressly add the PWFA to this list of statutes and thus would impose the same record preservation requirements for records relating to PWFA charges as are currently imposed for records relating to title VII, ADA, and GINA charges.

This recordkeeping requirement does not require respondents to create any records, but only requires each covered entity to preserve records it already has made or kept in the normal course of its business operations. The EEOC proposal addresses record preservation only and does not impose any reporting requirements under the PWFA. However, the EEOC reserves the right in the future to issue reporting regulations as may be necessary to accomplish the purposes of the PWFA, pursuant to the proper statutory process.

A public hearing concerning the proposed revision to the Commission’s

existing recordkeeping requirements will be held at a place and time to be announced, as required by section 709(c) of title VII as adopted by reference in the PWFA. Persons wishing to speak about the proposal to revise the record preservation requirements should notify the Commission in writing of their desire to do so with a request to Raymond Windmiller, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507. The request should include the requester’s contact information and a written summary of the remarks to be offered.

Regulatory Procedures

Executive Order 12866 (as Amended by Executive Order 14094)

The Commission has complied with the principles in section 1(b) of Executive Order 12866, as amended by Executive Order 14094, Regulatory Planning and Review. This rulemaking is not a “significant regulatory action” under section 3(f) of the Executive order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Executive order.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Commission provides the general public with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)).

These proposed changes to the EEOC’s existing regulations contain information collection requirements⁹ subject to review and approval by the Office of Management and Budget (OMB) under the PRA. It is estimated that the public recordkeeping burden will not increase significantly as a result of the revisions because all covered entities affected by them are already required to preserve records that they make or keep for a period of one or two years, and that requirement would not be changed by the proposed revisions. The only new requirement imposed by the proposed revisions is that, if a charge is filed under the PWFA during that one- or two-year period, a covered entity must continue to preserve any of those records already made or kept that are relevant to the PWFA charge until final disposition of the charge, which

may necessitate preservation for longer than one or two years.

As required by the PRA, the EEOC is submitting to OMB a request for approval of these information collection requirements under section 3507(d) of the PRA. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should access www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

Overview of Information Collection

Collection Title: Recordkeeping under Title VII, the ADA, GINA, and the PWFA.

OMB Number: 3046–0040.

Description of Affected Public: Employers and labor organizations subject to title VII.

Number of Respondents: 887,869.

Number of Reports Submitted: 0.

Estimated Burden Hours: 178,485 annually; 443,935 one-time burden.

Burden Hour Cost: \$5,806,101 annually; \$14,441,189.29 one-time burden.

Federal Cost: None.

Number of Forms: None.

Abstract: The PWFA adopted the enforcement mechanisms and procedures of title VII, such that these requirements also apply to the PWFA. Section 104(a)(1) of the PWFA¹⁰ incorporates the powers, procedures, and remedies found in section 709 of title VII. Section 709(c) of title VII,¹¹ by incorporation into the PWFA, authorizes the Commission to establish regulations pursuant to which employers subject to the PWFA shall preserve records to assist the EEOC in assuring compliance with the PWFA’s nondiscrimination in employment requirements. The EEOC has issued recordkeeping regulations setting out recordkeeping requirements for private employers (29 CFR 1602.14); employers, labor organizations, and joint labor-management committees that control apprenticeship programs (29 CFR 1602.21(b)); labor organizations (29 CFR 1602.28(a)); State and local governments (29 CFR 1602.31); elementary and secondary school systems or districts (29 CFR 1602.40); and institutions of higher education (29 CFR 1602.49(a)). These regulations require all covered entities to preserve records they make or keep for a period of one or two years and to continue to preserve all records

⁶ 44 U.S.C. chapter 35.

⁷ See 89 FR 46021.

⁸ For specific language for different covered entities, see 29 CFR 1602.14 (“Any personnel or employment record made or kept by an employer . . . shall be preserved”); 29 CFR 1602.21(b) (“other records relating to apprenticeship made or kept . . . shall be kept”); 29 CFR 1602.28(a) (“shall preserve other membership or referral records . . . made or kept”); 29 CFR 1602.31 (“Any personnel or employment record made or kept by a political jurisdiction . . . shall be preserved”).

⁹ Section 3502(3) of the PRA defines “collection of information” to include recordkeeping requirements.

¹⁰ 42 U.S.C. 2000gg–2(a)(1).

¹¹ 42 U.S.C. 2000e–8(c).

relevant to a title VII, ADA, or GINA charge against them until final disposition of the charge. This proposed rule would extend these same recordkeeping requirements to records relevant to a PWFA charge. Any records that are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of sections 706(b)¹² and 709(e)¹³ of title VII, which are adopted by reference into the ADA at section 107(a),¹⁴ GINA at section 207(a),¹⁵ and the PWFA at section 104(a).

Burden Statement: The estimated number of respondents currently subject to this recordkeeping requirement is 887,869 entities, which combines estimates from private employment,¹⁶ the public sector,¹⁷ colleges and universities,¹⁸ apprenticeship programs,¹⁹ and labor organizations.²⁰

Pursuant to the existing recordkeeping requirements under title VII, the ADA, and GINA in 29 CFR part 1602, a covered entity currently must preserve all personnel or employment records, records relating to

apprenticeship, or union membership or referral records made or kept by that entity for one year (private employers and labor organizations) or two years (apprenticeship programs and public sector). It also must continue to preserve any records relevant to charges filed under title VII, the ADA, or GINA until final disposition of the charges, which may be longer than one or two years. This recordkeeping requirement does not require respondents to make reports or create any records, but merely requires each covered entity to preserve records it already has made or kept in the normal course of business. Thus, for covered entities currently complying with these requirements, continued compliance does not impose an added time burden because their systems for preserving the records are already in place. For newly created entities, the EEOC previously has estimated an annual burden of 178,485 hours representing the time needed for appropriate personnel at the newly created entity to familiarize themselves with and to implement the recordkeeping requirements for title VII, the ADA, and GINA.

In addition to the above requirements, this proposed rulemaking would require covered entities also to continue to preserve records relevant to charges filed under the PWFA until final disposition of those charges. For existing entities (whose recordkeeping systems already preserve records relating to charges under title VII, the ADA, and GINA), the EEOC estimates a one-time burden associated with the time needed to update the recordkeeping systems to ensure compliance with the additional requirement to preserve PWFA charge records. Aside from this one-time burden, the EEOC estimates that the proposed revision imposes no annual burden on existing entities. For newly created entities that will be implementing new record preservation systems that cover title VII, ADA, GINA, and PWFA charge-related records, the time and associated cost of reviewing the regulatory standards and setting up the system will be virtually the same as it was before this proposed regulation added PWFA records. Accordingly, this proposal necessitates no change to the EEOC's previously approved annual burden estimate of 30 minutes for a newly created entity to set up an EEOC-compliant record preservation system.

Annual Burden on Newly Created Entities. Newly formed entities may incur a small burden when implementing their record preservation systems to ensure compliance with the EEOC's recordkeeping requirements.

The EEOC assumes some effort and time must be expended by newly created covered entities to familiarize themselves with the title VII, ADA, GINA, and PWFA recordkeeping requirements and explain those requirements to the appropriate staff. New entities will need to identify the appropriate records-focused personnel to understand the EEOC's straightforward recordkeeping requirements and ensure that the new entity follows them. To do so, they will need to recognize that they must preserve records that they will already make or keep in the ordinary course of their business for a period of one year (private employers and labor organizations) or two years (apprenticeship programs and public sector). For any of these already preserved records that are relevant to any charges of employment discrimination that may have been filed against the entity under title VII, the ADA, GINA, or the PWFA, the staff must arrange to continue to preserve them until final disposition of the charges, which may be longer than one or two years. The EEOC estimates that, on average, 30 minutes would be needed for this one-time familiarization process. Using projected business formation estimates from the U.S. Census Bureau for 2023 and the number of new apprenticeship programs established in 2021 provided by the Department of Labor, the EEOC estimates that there are 356,969 entities that would incur this start-up burden.²¹ Assuming a 30-minute burden per entity, the total annual hour burden is 178,485 hours (.5 hour × 356,969 new entities = 178,485 hours). The estimated associated burden hour cost to respondents is \$5,806,101, or around \$16.27 per new entity.²²

One-Time Burden on Existing Entities

To ensure compliance with the changes to the recordkeeping requirements, existing entities covered by those requirements may incur a one-time burden. The EEOC estimates that a respondent will need 30 minutes to ensure that its previously existing

²¹ Sources: U.S. Census Bureau, Business Formation Statistics (<https://www.census.gov/econ/bfs/index.html>); Total projected business formation statistics (series BF_PBF4Q) for 2023, across all industries, for the U.S., not seasonally adjusted; U.S. Department of Labor, New Apprenticeship programs for 2021 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021>).

²² Burden hour cost estimates are based on the median hourly wage rate of \$32.53 for Human Resources Specialists obtained from the Bureau of Labor Statistics, May 2024 (see U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, <https://www.bls.gov/ooh/>).

¹² 42 U.S.C. 2000e-5(b).

¹³ 42 U.S.C. 2000e-8(e).

¹⁴ 42 U.S.C. 12117(a).

¹⁵ 42 U.S.C. 2000ff-6(a).

¹⁶ Source of original data: U.S. Census Bureau, 2021 Statistics of U.S. Businesses (SUSB) (Dec. 2023) (<https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html>). Local Downloadable CSV data. Select U.S. & states, 6-digit NAICS. The original number of employers was adjusted to include only those with 15 or more employees.

¹⁷ Source of original data: U.S. Census Bureau, 2022 Census of Governments, Survey of Public Employment & Payroll Datasets & Tables. Individual Government Data File (<https://www.census.gov/data/datasets/2022/econ/apes/2022.html>). Local Downloadable Data zip file "Individual Unit Files." The original number of government entities was adjusted to include only those with 15 or more employees.

¹⁸ Source: U.S. Department of Education, National Center for Education Statistics, IPEDS, Fall 2022, Institutional Characteristics component (provisional data). See Table 1, "Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2022-23" (<https://nces.ed.gov/ipeds/search/viewtable?tableId=35945&returnUrl=%2Fsearch>).

¹⁹ Source: U.S. Department of Labor, Registered Apprenticeship National Results Fiscal Year 2021, Number of active apprenticeship programs in 2021 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021>). This is the most recent year for which the Department of Labor makes this data available.

²⁰ The EEOC has undertaken measures to enhance the agency's existing EEO-3 data frame (*i.e.*, roster) of potentially eligible filers that was most recently used during the 2022 EEO-3 data collection. The number of labor organizations was estimated by comparing the EEOC's 2022 EEO-3 frame to a list of active unions from the U.S. Department of Labor's Office of Labor Management Standards (OLMS) Online Public Disclosure Room (OPDR) database (<https://olmsapps.dol.gov/olpdr/>).

system of continuing to preserve records pertinent to charges filed under title VII, the ADA, and GINA until final disposition of those charges is modified to likewise preserve records relating to charges filed under the PWFA (based upon the above estimate that a new entity would need 30 minutes to implement its recordkeeping system). For the 887,869 respondents, this 30-minute burden per entity results in a total one-time burden of 443,935 hours (.5 hour × 887,869 respondents = 443,935 hours). The estimated associated one-time burden hour cost to respondents is \$14,441,189.29, or around \$16.27 per entity.²³

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;
2. Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Office of Information and Regulatory Affairs in OMB and the Commission review all comments posted at www.regulations.gov.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the Commission to evaluate the economic impact of this rulemaking on small entities. The RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. The Commission must determine whether the rule would impose a significant economic impact on a substantial number of such small entities. When an agency issues a rulemaking proposal, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the rule on

small entities.”²⁴ Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. For the reasons outlined below, the Chair of the Commission hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

This proposed rulemaking applies to employers with fifteen or more employees, the majority of which are small entities.²⁵ Although this proposed rule would impact small entities, it will not have a “significant economic impact” on those entities. As discussed above, the proposed rulemaking may result in each small entity subject to the EEOC's recordkeeping requirements incurring a one-time cost of approximately \$16.27, either as a new entity implementing a recordkeeping system that complies with the requirement or an existing entity updating the recordkeeping system it already has in place. The Commission has determined that the impact of this minimal one-time cost of \$16.27 per affected small entity will not be “significant.” Accordingly, the Commission certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities because any burden it may impose on these entities is minimal. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rulemaking 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, in 1995 dollars, updated annually for inflation. 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, 1532(a).

Congressional Review Act

This proposed rule is not a “rule” under the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996) because the Congressional Review

²⁴ 5 U.S.C. 603(a).

²⁵ Sources: U.S. Census Bureau, 2021 Statistics of U.S. Businesses (SUSB) (Dec. 2023) (<https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html>). Local Downloadable CSV data. Select U.S. & states, 6-digit NAICS; U.S. Small Bus. Admin., Table of Size Standards (Mar. 17, 2023) (<https://www.sba.gov/document/support-table-size-standards>).

Act only applies to final rules. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1602

Administrative practice and procedure, Equal employment opportunity.

Accordingly, the U.S. Equal Employment Opportunity Commission proposes to amend 29 CFR part 1602, as follows:

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII, THE ADA, GINA, AND THE PWFA

- 1. The authority citation for part 1602 continues to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117; 42 U.S.C. 2000ff–6; 42 U.S.C. 2000gg–2.

§§ 1602.14, 1602.21, 1602.28, and 1602.31 [Amended]

- 2. Remove the words “title VII, the ADA, or GINA” and add in their place the words “title VII, the ADA, GINA, or PWFA” in the following places:
 - a. Section 1602.14;
 - b. Section 1602.21(b);
 - c. Section 1602.28(a); and
 - d. Section 1602.31.

For the Commission.

Charlotte A. Burrows,

Chair.

[FR Doc. 2024–27286 Filed 11–20–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2024–0051; FRL–12403–01–R1]

Air Plan Approval; Connecticut; Approval of State Implementation Plan Requirements for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Connecticut. The SIP revisions are for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT Serious ozone nonattainment area for the 2008 ozone standard. The revisions pertain to requirements relating to reasonable further progress (RFP) plans, an Enhanced vehicle

²³ *Id.*