



Billing Code 6570-01

## **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Agency Information Collection Activities: Extension Without Change of an Existing Collection; Submission for OMB Review

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it is submitting to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations.

**DATES:** Written comments on this notice must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments on this notice must be submitted to Joseph B. Nye, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17<sup>th</sup> Street NW, Washington, DC 20503, email [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

Commenters are also encouraged to send comments to the EEOC online at

<http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the

instructions on the Web site for submitting comments. In addition, the EEOC's Executive Secretariat will accept comments in hard copy. Hard copy comments should be sent to Bernadette Wilson, Executive Officer, EEOC, 131 M Street NE, Washington, DC 20507. Finally, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("fax") machine before the same deadline at (202) 663-4114. (This is not a toll-free number.) 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) 663-4070 (voice) or (202) 663-4074 (TTY). (These are not toll-free telephone numbers.) The EEOC will post online at <http://www.regulations.gov> all comments submitted via this Web site, in hard copy, or by fax to the Executive Secretariat. These comments will be posted without change, including any personal information you provide. However, the EEOC reserves the right to refrain from posting 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. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters Library, 131 M Street, NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663-4630 (voice) or (202) 663-4641 (TTY). (These are not toll-free numbers.)

**FOR FURTHER INFORMATION CONTACT:** Kathleen Oram, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street, NE, Washington, DC 20507, (202) 663-4681 (voice) or (202) 663-4494 (TTY), or Erin Norris, Senior Attorney, Office of Legal Counsel, Equal Employment Opportunity Commission, 129 W. Trade Street, Charlotte, NC 28202, (704) 954-6491 (voice). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY).

**SUPPLEMENTARY INFORMATION:** The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, sex, national origin, disability, or genetic information. Section 709(c) of Title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 *et seq.* Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of the recordkeeping requirement in these regulations without change.

A notice that EEOC would be submitting this request was published in the Federal Register on February 20, 2018, allowing for a 60-day public comment period. Three comments were

received from the public; however, none of these comments addressed the EEOC's recordkeeping requirements. Accordingly, no changes have been made to the requirements based upon the unresponsive comments.

### **Overview of Current Information Collection**

**Collection Title:** Recordkeeping under Title VII, the ADA, and GINA

**OMB - Number:** 3046-0040

**Description of Affected Public:** Employers with 15 or more employees are subject to Title VII, the ADA, and GINA

**Number of Respondents:** 961,709

**Number of Reports Submitted:** 0

**Estimated Burden Hours:** 37,264 hours

**Cost to Respondents:** \$0

**Federal Cost:** None

**Number of Forms:** None

**ABSTRACT:** Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), section 1007(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff-6(a), require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which

are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

**BURDEN STATEMENT:** The estimated number of respondents subject to this recordkeeping requirement is 961,709 employers. An employer subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records made or kept by that employer for one year, and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one year. This recordkeeping requirement does not require reports or the creation of new documents, but merely requires retention of documents that an employer has already made or kept in the normal course of its business operations. Thus, existing employers bear no burden under this analysis, because their systems for retaining personnel and employment records are already in place. Newly formed firms may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC's recordkeeping requirements. We assume some effort and time must be expended by employers to familiarize themselves with the Title VII, ADA, and GINA recordkeeping requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using 2015 data from the Small Business Administration, we estimate that there are 74,528 firms that would incur this start-up burden.<sup>1</sup> Assuming a 30-minute burden per firm, the total annual hour burden is 37,264 hours (.5 hour x 74,528 = 37,264).

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<sup>1</sup> Source: U.S. Small Business Administration: Statistics of U.S. Business, Release Date 1/2017. (<https://www.sba.gov/advocacy/firm-size-data>). [Select U.S. Static Data, U.S. Data and combines estimates from private employment, public sector, colleges and universities, and referral unions.](#)

For the Commission

Dated: May 25, 2018.

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Victoria A. Lipnic,

Acting Chair.

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