



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

RIN 3046-AB28

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

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (“EEOC” or “Commission”) is issuing a final rule amending its regulations regarding recordkeeping and reporting requirements to delegate authority for making determinations on hardship exemption applications, to set forth the procedure for applying for exemptions, and to provide a non-exhaustive list of criteria for considering exemption applications.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gary Hozempa, Senior Attorney, at (202) 921-2672 or Gary.Hozempa@eeoc.gov, or Lynn Dickinson, Senior Attorney, at (202) 921-2559 or Lynn.Dickinson@eeoc.gov, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. 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), (800) 669-6820 (TTY), or (844) 234-5122 (ASL video phone).

SUPPLEMENTARY INFORMATION: On October 11, 2024, the EEOC published in the **Federal Register** a Notice of Proposed Rulemaking (“NPRM”) announcing its proposal to amend 29 CFR part 1602 by creating a new subpart addressing applications for exemptions that will be applicable to all EEO reports. This new subpart will replace the existing separate provisions addressing undue hardship applications for

the six EEO reports; therefore, the NPRM also proposed to remove and reserve 29 CFR 1602.10, 1602.18, 1602.25, 1602.35, 1602.44, and 1602.53. This new subpart will apply to all EEO reports as now constituted or subsequently modified.

In addition, the Commission proposed to revise its regulations to: (1) delegate to its Chief Data Officer (CDO) or the CDO's designee¹ the authority to make determinations on exemption applications; (2) establish express procedures for exemption applications; and (3) delineate the criteria that are used for assessing exemption applications.

Comments

The EEOC received two brief comments from individuals. Both comments emphasized the importance of efficiency when the EEOC processes hardship exemptions. Neither comment suggested changes to the text of the proposed rule.

The final rule adopts all amendments proposed in the NPRM without any revisions.

Regulatory Procedures

Executive Order 12866

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

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule imposes no new information collection requirements on the public, and therefore it will create no new paperwork burdens or

¹ References to the CDO in this final rule include the CDO's designee.

modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. To the extent that it affects small entities, it merely clarifies the process for requesting exemptions. For this reason, a regulatory flexibility analysis is not required.

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. To the extent that it may apply to state or local government reporting requirements, it merely clarifies the process for requesting exemptions. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This final rule does not substantially affect the rights or obligations of non-agency parties and, accordingly, it is not a “rule” pursuant to the Congressional Review Act. 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, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Equal Employment Opportunity Commission amends 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 29 CFR 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.

§§ 1602.10, 1602.18, 1602.25, 1602.35, 1602.44, and 1602.53 [Removed and Reserved]

2. Remove and reserve §§ 1602.10, 1602.18, 1602.25, 1602.35, 1602.44, and 1602.53.

3. Add subpart S, consisting of §§ 1062.57 and 1602.58, to read as follows:

Subpart S—Exemption from Reporting Requirements

Sec.

1602.57 Procedures.

1602.58 Consideration of exemption requests.

Subpart S—Exemption from Reporting Requirements

§ 1602.57 Procedures.

(a) If a filer claims that the preparation or filing of the report would create undue hardship, the filer may apply to the Commission for an exemption from the requirements set forth in this part by submitting a written exemption application according to the applicable collection's accompanying instructions. Filers must demonstrate with specific facts (and supporting documentation, as appropriate) how preparing or filing the report would create undue hardship.

(b) The Commission hereby delegates to its Chief Data Officer (CDO), or the CDO's designee, authority to make determinations on applications for exemptions under this subpart.

(1) The CDO shall expeditiously issue a written determination notifying the filer of the disposition of the exemption application.

(2) If the CDO denies the application for an exemption, the CDO will notify the filer in writing of the following:

(i) The deadline for filing the report, which will be at least 30 calendar days after the CDO's determination; and

(ii) That the filer may bring a civil action in the United States District Court for the district where the filer's records are kept, pursuant to 42 U.S.C. 2000e-8(c).

(c) While an application is pending, the filer must continue to collect and prepare the data required for the report in case the exemption request is denied.

(d) The CDO will report annually to the Commission the number of exemption applications received and the determinations made on those applications and will make the applications and written determinations available to the Commission.

§ 1602.58 Consideration of exemption requests.

(a) The CDO, or the CDO's designee, will consider the facts and circumstances presented in each application, including but not limited to:

(1) The nature and extent of the filer's efforts to collect and retain the required information;

(2) The degree to which the filer attempted to anticipate and preempt any problems in collecting and retaining the required information;

(3) The filer's prior data reporting history, including whether the filer previously failed to submit a report or requested an exemption, and if so, whether such exemption was granted;

(4) The degree to which the circumstances are beyond the filer's control or are extraordinary; and

(5) The degree to which compliance has been rendered impracticable or impossible (e.g., due to natural disaster or data loss).

(b) The filer bears the burden to demonstrate that the reporting requirement would result in undue hardship.

(c) Circumstances that generally will not form the basis of a finding of undue hardship include, but are not limited to:

(1) A filer's number of establishments alone;

- (2) A filer's lack of knowledge about the reporting requirements;
- (3) Routine or purposeful data expungement by the filer or a third party; and
- (4) A filer's failure to plan for adequate data security, maintenance, or transfer (e.g., data loss due to a change in vendor or employee succession where the filer or vendor failed to back up the data).

Charlotte A. Burrows,

Chair, Equal Employment Opportunity Commission.

Dated: December 31, 2024.

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