

PUBLICATION

EEOC to Employers: Must Retain Workers Records to Prove Compliance with GINA

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The U.S. Equal Employment Opportunity Commission (EEOC) recently determined that employers must retain worker records to demonstrate their compliance with the Genetic Information Nondiscrimination Act (GINA). The EEOC's new rule applies Title II of GINA, which prevents the use of genetic information to discriminate against individuals whose genetic records may call into question the costs associated with potential medical treatment.

This record-keeping rule, which goes into effect April 3, 2012, requires employers to retain workplace records for potential Title II investigations. The EEOC stressed that the rule does not require employers to create any new documents, but rather retain in a confidential manner any documents already gathered which bear upon employees' or their immediate family members' health conditions that have or tend to have a genetic component. Examples of such documents would include medical records, functional capacity examinations, health questionnaires or documents pertaining to applicable medical leaves of absence.

Approximately 900,000 employers having 15 or more employees are subject to the EEOC's existing recordkeeping requirements, the EEOC said.