



## Legal Alert: Title VII Record-Keeping Requirements Extended to GINA

2/3/2012

**Executive Summary:** In a final rule published by the Equal Employment Opportunity Commission (EEOC) on February 3, 2012, the agency has extended the record-keeping requirements imposed under Title VII and the Americans with Disabilities Act (ADA) to entities covered by Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). The rule takes effect April 3, 2012.

Title II of GINA prohibits discrimination by employers and insurers based on genetic information. GINA prohibits employers (as well as employment agencies and labor unions) from discriminating against employees and applicants for employment on the basis of genetic information. The law also prohibits employers from requesting or acquiring genetic information regarding an employee or a family member of an employee. Additionally, the law prohibits discrimination based on genetic information with regard to participation in apprenticeship or training programs. It does not, however, create a disparate impact cause of action for genetic discrimination. Like Title VII, Title II of GINA covers employers with 15 or more employees, employment agencies, labor unions, and joint labor-management training programs, as well as federal sector employers.

The new rule does not require the creation of new documents; it merely amends the existing record-keeping requirements imposed by Title VII and the ADA to include references to GINA. These provisions require private (nongovernmental) employers to retain personnel and employment records for one year from the date the record is made or the personnel action is taken, whichever occurs later. In the case of involuntary termination, however, the employer must retain the terminated employee's personnel or employment records for one year from the date of termination.

Additionally, when a charge of discrimination has been filed under Title VII, the ADA, or GINA, or where a civil action has been brought by the Commission or the Attorney General, the private employer, state or local government employer, educational institution employer, labor union, or apprenticeship committee must retain all records related to the charge or action until final disposition of the charge or action. The date of final disposition means the date of expiration of the statutory period within which the aggrieved person may bring an action in a U.S. District Court or, where such an action has been brought, the date on which such litigation is terminated.

**Employers' Bottom Line:**

Except where a claim is made alleging discrimination based on genetic information, this new rule will not change anything – GINA will simply become another basis for requiring employers to maintain records they were already required to keep.

If you have any questions regarding this Alert or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.