



6570-01

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1635

[EEOC-2018-0005]

RIN 3046-AB02

Removal of Final GINA Wellness Rule Vacated by Court

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This final rule removes from the Code of Federal Regulations a section of the final rule published on May 17, 2016, entitled, “Genetic Information Nondiscrimination Act.” This action responds to a decision of the U.S. District Court for the District of Columbia that vacated the incentive section of the GINA rule effective January 1, 2019.

DATES: The action is effective on January 1, 2019.

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SUPPLEMENTARY INFORMATION: On May 17, 2016, the Equal Employment Opportunity Commission (EEOC) published a final rule entitled, “Genetic Information Nondiscrimination Act” under the authority of Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. 2000ff-2000ff-11. 81 *Federal Register* 31143. The rule “addressed the extent to which an employer may offer an inducement to an employee for the employee’s spouse to provide his or her current health status information as

part of a health risk assessment (HRA) administered in connection with an employee-sponsored wellness program.” *Id.*

On October 24, 2016, AARP filed a complaint in the U.S. District Court for the District of Columbia challenging the incentive section of the GINA rule. On August 22, 2017, the District Court concluded that the Commission did not provide sufficient reasoning to justify the incentive limit adopted in the GINA rule and remanded the rule to the EEOC for further consideration without vacating it. Following a motion by AARP to alter or amend the court’s summary judgment order, the court issued an order vacating the incentive section of the rule, 29 CFR 1635.8(b)(2)(iii), effective January 1, 2019. *AARP v. EEOC, D.D.C.*, No. 16-2113 (D.D.C. Dec. 20, 2017). Consistent with that decision, this rule removes the incentive section of the GINA regulations at 29 CFR 1635.8(b)(2)(iii).

This rule is not subject to the requirement to provide public comment because it falls under the good cause exception at 5 U.S.C. 553(b)(B). The good cause exception is satisfied when notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* This rule is an administrative step that implements the court’s order vacating the incentive section of the GINA rule. Additionally, because this rule implements a court order already in effect, the Commission has good cause to waive the 30-day effective date under 5 U.S.C. 553(d)(3).

List of Subjects in 29 CFR Part 1635

Administrative practice and procedure, Equal employment opportunity.

For the reasons set forth in the preamble, under the authority of 42 U.S.C. 2000ff-2000ff-11, the EEOC amends chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1635—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

1. The authority citation for part 1635 continues to read as follows:

Authority: 29 U.S.C. 2000ff.

§ 1635.8 [Amended]

2. Amend § 1635.8 by removing and reserving paragraph (b)(2)(iii).

Dated: December 14, 2018

Victoria A. Lipnic

Acting Chair, U.S. Equal Employment Opportunity Commission

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