Part XXV

Equal Employment Opportunity Commission

Semiannual Regulatory Agenda
### Equal Employment Opportunity Commission—Proposed Rule Stage

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3375. DISPARATE IMPACT AND REASONABLE FACTORS OTHER THAN AGE

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 628

**CFR Citation:** 29 CFR 1625.7(d)

**Legal Deadline:** None

**Abstract:** In Smith v. City of Jackson, 544 U.S. 228 (2005), the U.S. Supreme Court affirmed that disparate impact is a cognizable theory of discrimination under the ADEA but indicated that “reasonable factors other than age,” not “business necessity,” is the appropriate model for the employers’ defense against an impact claim. Accordingly, the Commission intends to revise its regulation on disparate impact, currently codified at 29 CFR section 1625.7(d).

**Timetable:**

<table>
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<th>Date</th>
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<tbody>
<tr>
<td>NPRM</td>
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**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:** Federal, Local

**Agency Contact:** Dianna B. Johnston, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507
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**RIN:** 3046–AA76

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3376. REVISION OF RACE AND ETHNICITY DATA COLLECTION METHOD

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 42 USC 2000e–8(c); 42 USC 2000e–12(a)

**CFR Citation:** 29 CFR 1602.13

**Legal Deadline:** None

**Abstract:** This NPRM will conform the Commission’s rules to a key change for the revised EEO-1 for reporting years starting in 2007. EEOC will propose to make employee self-identification the preferred method for collecting race and ethnic data on employees. The current rule permits employers to gather this data from revised surveys or from employment records.

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**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:** Local, State, Tribal

**Agency Contact:** Thomas J. Schlageter, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507
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**RIN:** 3046–AA81

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3377. COVERAGE UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

**Priority:** Other Significant

**Legal Authority:** 29 USC 621 et seq

**CFR Citation:** 29 CFR 1625.2; 29 CFR 1625.4 to 1625.5

**Legal Deadline:** None

**Abstract:** In General Dynamics Land Systems v. Cline, 540 U.S. 581 (2004), the U.S. Supreme Court held that the Age Discrimination in Employment Act of 1967 (ADEA) only prohibits age-based discrimination against relatively older individuals. It rejected the Commission’s position that the ADEA also prohibits age-based discrimination against relatively younger individuals who are age 40 or over. The Commission is therefore revising relevant portions of its regulations to conform to the holding in Cline.

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**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:** Federal, Local, State

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**RIN:** 3046–AA78

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3378. COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

**Regulatory Plan:** This entry is Seq. No. 134A in part II of this issue of the Federal Register.

**RIN:** 3046–AA72
## Equal Employment Opportunity Commission (EEOC) - Long-Term Actions

### 3379. Federal Sector Equal Employment Opportunity Complaint Processing

**Priority:** Other Significant  
**CFR Citation:** 29 CFR 1614  
**Timetable:**

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**Regulatory Flexibility Analysis Required:** No  
**Small Entities Affected:** No  
**Government Levels Affected:** Federal  
**Agency Contact:** Thomas J. Schlageter  
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**RIN:** 3046–AA73

### 3380. Nondiscrimination on the Basis of Disability in Programs and Activities Conducted by the Equal Employment Opportunity Commission and Accessibility in Electronic and Information Technology

**Priority:** Substantive, Nonsignificant  
**Legal Authority:** 29 USC secs 794, 794(f)(2)  
**CFR Citation:** 29 CFR 1615.101; 29 CFR 1615.102; 29 CFR 1615.103; 29 CFR 1615.135; 29 CFR 1615.140; 29 CFR 1615.170  
**Legal Deadline:** None  
**Abstract:** The Equal Employment Opportunity Commission proposes to amend its regulation at 29 CFR part 1615 to establish that all complaints under section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794d(f)(2) (section 508), whether filed by members of the public or EEOC employees, will be processed under the procedures in 29 CFR section 1615.170 (d–m) (procedures for section 504 public complaints). This NPRM also would update terminology in 29 CFR part 1615, which outlines how EEOC enforces section 504 of the Rehabilitation Act with respect to its own programs and activities.  
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**Regulatory Flexibility Analysis Required:** No  
**Government Levels Affected:** Federal  
**Agency Contact:** Carol R. Miaskoff, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507  
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**RIN:** 3046–AA82

### 3381. Posting Requirements Under the Notification and Federal Employee Antidiscrimination and Retaliation Act

**Priority:** Other Significant  
**CFR Citation:** 29 CFR 1614.701 et seq

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**Regulatory Flexibility Analysis Required:** No  
**Small Entities Affected:** No  
**Government Levels Affected:** Federal  
**Agency Contact:** Thomas J. Schlageter  
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**RIN:** 3046–AA74

### 3382. Repositioning of Commission Field Offices

**Priority:** Substantive, Nonsignificant  
**CFR Citation:** 29 CFR 1601; 29 CFR 1603; 29 CFR 1610; 29 CFR 1615; 29 CFR 1621; 29 CFR 1626

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**Regulatory Flexibility Analysis Required:** No  
**Small Entities Affected:** No  
**Government Levels Affected:** None  
**Agency Contact:** Thomas J. Schlageter  
Phone: 202 663–4668  
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**RIN:** 3046–AA80