

Arbitrary Disposal of Rejected Employment Applications vs. EEOC Regulations

Labor & Employment Law Update

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On the final day of September, the EEOC filed a sex discrimination lawsuit against the Coca Cola Bottling Company of Mobile, Alabama. The EEOC frequently files lawsuits, but this lawsuit had an additional claim not often seen, which may be a wake-up call to many employers.

That claim was based on the bottling company's alleged failure to preserve employment records—specifically, employment applications.

Federal regulations require the retention of employment applications “for a period of one year from the date of the making of the record or the personnel action involved, whichever occurs later.” For rejected applicants, the personnel action at issue is, of course, the rejection of the applicant.

Unless an employer is the rare company that makes decisions on applications the same day they are received, the EEOC's retention requirements mandate that the employer keeps applications for one year—that is, one year from the date of rejection. If an employer fails to comply with this recordkeeping requirement, the EEOC can bring a lawsuit against the employer for an injunction to force the employer's compliance.

What all of this means for employers, is that they must implement record retention procedures under which rejected applications are retained for a minimum of one year. Although it may seem obvious, step one of implementing such a procedure requires documenting the date when the decision to reject an application is made.

While some employers may brush off the record retention requirements as low-risk and overly technical, the reality is that if the EEOC investigates your company and finds recordkeeping violations, those violations may incite the EEOC to make more serious and widespread allegations of discrimination. These allegations will be more difficult to defend if the company has already destroyed relevant documents, such as employment applications. Bearing that in mind, employers should take this opportunity to review their record retention policies and

procedures to ensure they comply with the EEOC's regulations.

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