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**\*\*EMPLOYMENT LAW ALERT\*\***

**By: S. Whitney Rahman**

The Equal Employment Opportunity Commission (“EEOC”) has recently begun to take a much stricter view of what documents are protected by the privacy provisions of the Americans with Disabilities Act (“ADA”). Under the ADA, if an employer requires prospective employees to undergo a pre-employment medical examination, or if the employer requires any current employee to undergo a medical examination, the employer must ensure that the information received is collected and maintained on separate forms and held in separate medical files. 42 U.S.C. § 12112(3)(B). The regulations to the ADA also specify that information obtained as a result of medical testing of an employee must be collected and maintained on separate forms and held in separate medical files. 29 C.F.R. § 1630.14(c)(1).

The EEOC now is taking the position that any document that may indicate that an employee has a medical condition that could be a disability must be held in a file separate from the employee file. Thus, return-to-work slips, doctor’s notes excusing absences, and doctor’s notes outlining restrictions are among items that the EEOC has claimed should be held in a separate medical file.

While we believe that the EEOC’s interpretation goes far beyond what is required under the ADA and its regulations, any employer who does not want to spend money fighting this issue is well-advised to begin holding such information in the employee’s separate medical file.

If you have any questions, please call Whitney Rahman or John Roland.