

EEOC PROPOSES CHANGES TO THE EEO-1 REPORTING OBLIGATIONS

Labor & Employment Alert
March 11, 2016

The Equal Employment Opportunity Commission (EEOC) has proposed a rule that would require private employers with 100 or more employees, as well as certain federal contractors and subcontractors, to include pay data by race, ethnicity and sex in their annual EEO-1 reports. The White House announced that the proposed rule would cover over 63 million employees.

Private employers with 100 or more employees and certain federal contractors have long been required to file Form EEO-1 Employer Information Reports disclosing racial, ethnic and other demographics of their workforces. The information is collected by the EEOC and used for “a variety of purposes including enforcement, self-assessment by employers, and research,” according to the agency.

Under the EEOC’s proposal, covered employers would be required to report information pertaining to employees’ “W-2 earnings and hours worked.” The revised EEO-1 would collect aggregate W-2 data in twelve pay bands (which were established by the EEOC) for the ten EEO-1 job categories already used. The EEOC explained that “[e]mployers will simply count and report the number of employees in each pay band.” The EEOC claims that the submission of W-2 data will not impose a significant burden on employers because employers already compile this information for tax purposes. However, W-2 Forms reflect wages earned in a calendar year, not from October 1 through September 30 (which is the calendar year for EEO-1 reporting). Thus, to comply with the proposed requirements, employers will be required to collect and report W-2 data specifically for the revised EEO-1 report.

The EEOC has also released a template of the revised EEO-1 Form.

The EEOC is soliciting comments from employers on how to collect data on hours worked by salaried employees. The agency has commented that one approach would be to use an estimate of 40 hours per week for full-time salaried employees. Notably, the EEOC “is not proposing to require an employer to begin collecting additional data on actual hours worked for salaried workers, to the extent that the employer does not currently maintain such information.”

The EEOC and the Office of Federal Contract Compliance Programs (OFCCP) intend to use the compensation data to “focus agency investigations, assess complaints of discrimination, and identify existing pay disparities that may warrant

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further examination.” Secretary of Labor, Thomas E. Perez, emphasized that the compensation data would provide the U.S. Department of Labor with “a more powerful tool to do its enforcement work.” In addition, the EEOC and OFCCP plan to develop statistical tools that would help them identify pay disparities warranting further review by those agencies, and potential investigations.

A public hearing on the proposed amendments to the EEO-1 reporting process is scheduled for March 16, 2016. Members of the public are invited to comment on the proposal at the public hearing, or otherwise until April 1, 2016. Should the proposed revisions be implemented, they will become effective in 2017, and employers will be required to submit the additional information on their EEO-1 reports filed by the September 30, 2017 deadline.

The proposed changes to the EEO-1 requirements were announced on the seventh anniversary of the Lilly Ledbetter Equal Pay Act. Consistent with the Obama Administration’s emphasis on pay equity, the stated goal of the proposed rule is to “further advance equal pay for all workers.”

If adopted, the proposed rule will require employers to change how they compile information for EEO-1 reporting, imposing additional administrative burdens. Further, information disclosed in the reports may lead to an increase in pay-related claims, and investigations by the federal administrative agencies. In light of the federal government’s focus on pay equity, and New York State’s recent promulgation of laws concerning pay equity, employers should consider conducting a privileged audit of their pay policies and practices to ensure compliance with equal pay laws.

We will provide more information about the proposed changes to the EEO-1 reporting obligations as it becomes available. Should you have any questions about EEO-1 reporting generally, or the proposed rule, please contact any member of the Hodgson Russ Labor and Employment team.