



Alerts

EEOC Announces Plan to Begin Collecting Pay Data on EEO-1 Reports

February 1, 2016

Employment Practices Alert

The Equal Employment Opportunity Commission (EEOC) [announced](#) last Friday a proposed rule that will require all employers with 100 or more employees to report pay and hours based on their employees' race and gender. The rule change would revise the EEO-1 Report to include this new reporting category. The proposed rule is scheduled for formal publication on Monday, February 1. The public has until April 1, 2016 to comment.

What's the context behind these proposed rule changes?

The [White House](#) (and [Lilly Ledbetter](#)) unveiled the proposed rules at a press conference, in an announcement that featured several other actions that the "Administration is taking to advance equal pay for all workers." The actions stem from the recommendation of President Obama's 2010 Equal Pay Task Force and a Presidential Memorandum [issued](#) on April 8, 2014.

What are the proposed changes to the reporting requirements?

Pursuant to Title VII of the Civil Right Act of 1964, the EEOC and the Department of Labor [already require](#) employers with 100 or more employees to count employees by ethnicity, race, and sex by job category. The data is collected annually from any pay period occurring from July through September, and then reported by September 30th on the Standard Form 100, Employer Information Report EEO-1.

The proposed rules would require those same employers to also collect data on employees' total annual W-2 earnings and annual hours worked. Reporting on this data would begin with the 2017 reporting cycle (i.e., September 30, 2017).

A revised, draft EEO-1 form reflecting this reporting can be found [here](#). As an overview, this draft form requires reporting the number of employees who make a certain salary within each of ten job classifications, divided by gender and by seven race and ethnicity categories. Each job category has twelve pay bands for "annual salary," ranging from "\$19,239 and under" to "\$208,000 and over." The draft form first requires the employer to report the number of employees in each classification, category, and pay band. Next, the draft form requires the employer to report the number of hours worked in the last year in each pay band cell. The EEOC seeks input from employers on how to best report hours worked for salaried employees.

Service Areas

Labor & Employment



A few potential problems are readily apparent from a review of the proposed rules. Most critically, the proposed rules are not crystal clear about how an employer should determine the "annual salary" and "total number of hours worked in the last year." The proposed rules seem to envision a rolling one-year look back from the chosen pay period occurring from July through September. However, the proposed rules could also be interpreted to require a report from October 1 of the previous year through September 30 of the reporting year. The final rules should be much clearer given the importance for employers of getting this data correct.

Confidentiality of information for individual workers is also an issue. While the proposed rules do not require pay data on individual workers, they also do not fully address confidentiality concerns when, for instance, only one employee falls into a particular classification, category, and pay band.

What's next?

The proposed rules signify future, increased scrutiny in this area. After all, their stated purpose is to increase enforcement of equal pay laws through better insight into discriminatory pay practices. Additionally, the proposed rules state that the EEOC plans on developing and utilizing statistical tools to enable its staff to "focus investigations" and "identify employers with existing pay disparities that might warrant further examination."

What can we do?

Altogether, while the proposed rules will not require employers to gather data they are not already collecting, they will require many employers (67,146 filers in 2014) to face additional reporting burdens relating to an estimated total of 63 million employees. Given this impact, in addition to increased enforcement and the chances of increased litigation, we will continue to keep you informed of any updates, including news and the final publication of the rule changes.

In the meantime, the proposed rules are not yet final. The public has until April 1, 2016 to take advantage of the opportunity impact the rules' final form by submitting comments.