

Publications

Labor and Employment Alert: EEOC Wants to Collect Employee Pay Data from Employers

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On February 1, 2016, the Equal Employment Opportunity Commission (EEOC) published proposed revisions to its Employer Information Report (the EEO-1) that are intended to “assist the agency in identifying possible pay discrimination and assist employers in promoting equal pay in their workplaces.” (The agency’s Notice is available [here](#)). To that end, the revised EEO-1 would require covered employers to provide the aggregate data on pay ranges and hours worked for their employees.

Currently, covered employers (most federal contractors and employers with at least 100 employees) annually submit an EEO-1 by September 30 that sets out their employees by job category, ethnicity, race and sex. If the new EEO-1 is adopted, beginning September 30, 2017, employers also would include pay data within 12 specified pay bands. These pay bands track those used by the Bureau of Labor Statistics in the Occupation Employment Statistics survey: (1) \$19,239 and under; (2) \$19,240 - \$24,439; (3) \$24,440 - \$30,679; (4) \$30,680 - \$38,999; (5) \$39,000 - \$49,919; (6) \$49,920 - \$62,919; (7) \$62,920 - \$80,079; (8) \$80,080 - \$101,919; (9) \$101,920 - \$128,959; (10) \$128,960 - \$163,799; (11) \$163,800 - \$207,999; and (12) \$208,000 and over. According to the EEOC, “pay bands would generate reliable aggregated data to support meaningful statistical analysis” that would show within-job-category variation, across-job-category variation, and overall variation – which may (or may not) point to potential pay discrimination.

Employers would identify their employees' total W-2 earnings for a 12-month period looking back from a pay period between July 1st and September 30th. To account for part-time employees, employees working less than a full twelve months, and employees working for multiple employers, employers would also report the number of hours worked by the employees counted in the pay bands. The EEOC has requested employer input on how to report hours worked for salaried employees. The proposed EEO-1 is available [here](#).

The EEOC’s avowed purpose in collecting this pay data is to gain “insight into pay disparities across industries and occupations” in order to “improve enforcement of federal pay discrimination laws and

support employers' voluntary compliance with those laws." To do so, the EEOC would share the pay data with the Office of Federal Contract Compliance Programs (OFCCP), which oversees the affirmative action and equal employment opportunity obligations of federal contractors. Then, "EEOC and OFCCP will use this data to more effectively focus agency investigations, assess complaints of discrimination, and identify existing pay disparities that may warrant further examination."

The EEOC has tried to anticipate questions about confidentiality by stating that the EEO-1 data is held "confidential as required by law." Moreover, the EEOC does not publish individual EEO-1 reports, only aggregated data in a manner that does not reveal any particular employer's or employee's information (The EEOC intends to publish the aggregate pay data it acquires from employers by industry and geographic location). These pronouncements may do little to assuage employer concerns that their pay data will be secure within the EEOC's computers. Last year, hackers breached the federal government's computer networks and stole the social security numbers and other personal information of 21 million people.

Interested parties have until April 1, 2016, to submit their comments to the EEOC on the proposed EEO-1 revisions. We will keep you apprised of the EEOC's pay data efforts. In the interim, contact your Vorys lawyer if you have questions about the EEO-1 or potential pay disparity or discrimination.