



EEOC Proposes New Pay Data Reporting Requirements for Employers

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President Obama has announced that the EEOC is proposing new pay data reporting requirements for employers. Under the proposal, employers would be required to provide annual information on W-2 compensation and hours worked for every employee. Any employer with at least 100 employees, and any federal contractor with at least 50 employees, would be required to provide the information. The proposal, if adopted, would take effect in 2017.

The vehicle for gathering this pay information would be the EEO-1 information report which is filed on an annual basis by covered employers. Currently, the EEO-1 report requires an employer to place each job in one of 10 "Job Categories." Then all incumbents within each Job Category are identified based on race/ethnicity and gender. The proposed change to the EEO-1 report would add a further layer of classification based on W-2 pay: each Job Category would be subdivided into 12 "pay bands." Thus, where an employer would now report, for example, the number of Sales Workers who are female and Hispanic, the proposal would require reporting of Sales Workers who are female and Hispanic and which of the 12 pay bands correspond to the W-2 pay for each of those employees. The addition of these pay bands would increase the complexity of the report. Currently the EEO-1 report includes a matrix of 140 discrete cells (10 Job Categories, with 14 possible race/ethnic/gender selections for each). The proposal would result in an EEO-1 report with 1,680 possible choices for placement of each employee (10 Job Categories, 12 pay bands for each Job Category, 14 race/ethnic/gender choices for each Job Category/pay band pair).

In addition to W-2 pay information, the proposal would also require employers to report total hours worked. This information would be reported on a second 1680-cell matrix. For each cell from the first matrix, described above, which includes at least one employee, the total hours worked for all those employees would be reported in the corresponding cell on the second matrix. Thus, for example, if an employer has 3 Sales Workers who are female, Hispanic, and were paid between \$39,000 and \$49,919, the employer would be required to report the total hours those three employees worked.

The EEOC has posted the proposal on its website, which you may find [here](#). Included within the full proposal is a sample of the new EEO-1 form.



In announcing this proposal, Obama administration officials stated that pay discrimination "remains a persistent problem" and that the information requested is necessary to assess discrimination complaints, to guide agency investigations and to identify pay disparities that may warrant a "closer look." They also expect that this information will help employers evaluate their own pay practices in order to prevent pay discrimination.

As noted, these new requirements are currently in the proposal stage. A public comment period is open through April 1, 2016. Comments will likely be submitted on issues such as the amount of time needed to compile and report the requested information, and the fact that the data requested will not account for legitimate reasons for pay differences such as experience, education and performance. The current proposal, if adopted by the EEOC after the comment period, would take effect with the 2017 EEO-1 filings.

Employers should take this as another sign that potential pay disparity issues remain a high priority for the EEOC (and OFCCP, for government contractors). The data sought in this proposal will not tell the whole story, but it could be used to identify potential discrepancies that will lead to further investigation. If the data shows, for example, that the males in a certain Job Category predominantly fall in a higher pay band than the females, the EEOC (or a plaintiff's lawyer) may want to know why. Even if this proposal is never adopted, it would still be a good idea for each employer to review its process for making pay-related decisions (setting initial pay at hire, determining annual pay raises and any other pay-related decisions) to ensure that there is a legitimate basis, which was documented at the time, that explains the decision. This information should be useful for the employer in evaluating internal pay equity, and in defending against any claim that pay differences are based on race, gender or other impermissible criteria.

If you have any questions, please contact your Lathrop Gage attorney or the attorney listed above.