



EEOC Plans to Target Gender Pay Gap by Collecting Pay Data from Large Employers

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On January 29, 2016, nearly seven years after the Lilly Ledbetter Fair Pay Act was enacted into law, the U.S. Equal Employment Opportunity Commission (the “EEOC”) announced a proposed revision to the Employer Information Report, EEO-1, otherwise known as the EEO-1 Report, to include pay data from large employers and federal contractors.

By way of brief background, every year, federal contractors with more than 50 employees and general employers with more than 100 employees are required to file an EEO-1, a compliance survey report that requires employers to categorize company employment data by race/ethnicity, gender and job category. In other words, these employers must currently report to the EEOC the number of employees by job category by race, ethnicity, and sex. The EEOC and the Office of Federal Contract Compliance Program (“OFCCP”) have been using this EEO-1 data to support civil rights enforcement and to analyze employment patterns since 1966.

Beginning in 2017, the EEOC’s proposed revision to the EEO-1 would require employers to add data on pay ranges and hours worked and provide substantial salary data by race, gender and ethnicity. The EEOC stated that it intends to use the pay data to identify possible pay discrimination and promote equal pay in the workplace. Details of the proposed revision were set forth in the [Federal Register](#) on Monday, February 1, 2016.

“More than 50 years after pay discrimination became illegal it remains a persistent problem for too many Americans,” said EEOC Chair Jenny R. Yang. “Collecting pay data is a significant step forward in addressing discriminatory pay practices. This information will assist employers in evaluating their pay practices to prevent pay discrimination and strengthen enforcement of our federal anti-discrimination laws.” The EEOC also intends to publicly release the collected data in an annual salary report, showing the average pay for workers in different sectors and industries across the country. The “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.”

Following the announcement, business associations quickly voiced their opposition to the EEOC’s proposed revision. For example, Randy Johnson, senior vice president of Labor, Immigration, and Employee Benefits for the U.S. Chamber of Commerce said that the proposed revision “would place unnecessary and onerous burdens on employers while providing no meaningful insight.” In addition to the increased reporting burdens, employers will face, liability for facially disparate salaries and the lack of confidentiality of pay data are other significant concerns for employers.

The federal government is not alone in focusing on this equal pay issue. Recently, New Jersey's Senate Labor Committee approved a bill sponsored by Senate President Steve Sweeney and Senate Majority Leader Loretta Weinberg aimed at providing additional equal pay protections in New Jersey. The bill seeks to weed out unequal pay by requiring employers to justify different rates of compensation by providing factors other than an employee's sex, resetting the statute of limitations to file unequal pay claims, and prohibiting retaliation against employees for disclosing compensation information. Regarding the bill, New Jersey Senator Weinberg said, "We have to do more to create an environment where women's work is valued and compensated equal to their male counterparts." All states but Alabama, South Carolina, Utah, and Mississippi have wage equality laws, according to the American Association of University Women.

Federal contractors and employers with more than 100 employees should monitor the development of the EEOC's proposed revision. Comments to the proposal are due by April 1, 2016. Employers are advised to make sure that their internal policies and procedures comply with various federal and state discrimination laws. Employers also need to start collecting data soon in order to prepare for the potential September 2017 deadline.

If you or your institution has any questions or concerns regarding employment or education-related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

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