



WORDS ON WISE MANAGEMENT

EEOC proposes compensation reporting on EEO-1

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The Equal Employment Opportunity Commission (EEOC) has completed proposed revisions to the Employer Information Report, commonly referred to as the EEO-1 report, that will require covered employers to report “aggregate workforce compensation data” beginning September 30, 2017. The EEOC will use the data to identify possible pay discrimination. The agency believes the data will “assist employers in promoting equal pay in their workplaces.”

Who will be affected, and what’s required?

Employers with 100 or more employees, and federal contractors and subcontractors that have 50 or more employees and contracts worth \$50,000 or more, will be required to include the compensation data as part of their EEO-1 reports.

The current EEO-1 requires “head counts” in each of 12 categories. The categories would not be changed in the new report. For each category, however, employers will report total W-2 earnings in “pay bands.”

For example, an employer may report that it employs 10 African-American males as craft workers in the second pay band (\$19,240-\$24,439). The W-2 earnings would be a 12-month “look back” from the date of the EEO-1 report and include part-time workers and those who have worked fewer than 12 months. According to the EEOC, W-2 earnings are preferred for assessing potential discrimination because they include not only wages and salaries but also bonuses, commissions, and taxable fringe benefits.

Electronic reporting

The EEO-1 report will be revised to include compensation data and must be submitted electronically. According to the EEOC, nearly all EEO-1 filers already use electronic record keeping and reporting. However, employers may request an exception to electronic filing, if necessary. Each employer will incur a cost in developing new queries to produce the data in the required format. The EEOC plans to develop statistical tools to conduct analyses of the data and will likely provide employers access to these tools.

But contrary to the EEOC’s optimistic view, the complexity of the new requirements from a practical standpoint means that reporting by gender and the 12 pay bands would create 240 new categories in which to slot employees. Further, adding race/ethnicity to gender and pay band reporting will result in 1,680 cells/categories into which employees can be slotted.

Some experts have criticized the plan because of a risk of “false positives” of apparent pay disparities and confidentiality concerns. However, the EEOC states it will not have access to individuals’ compensation data on EEO-1 reports. The agency will report aggregated data in a manner that doesn’t reveal any particular employer’s or employee’s information.

The EEOC believes that essentially all of the employers that will be required to report this data already have some type of data management system that will allow relatively easy collection of the data (e.g., a payroll program or a separate HR information system, or HRIS). Because the minimum number of employees is 100 (or fewer for some contractors), it’s certainly possible that many smaller companies don’t currently have that capability.

What to do now?

Here are some suggestions for preparing your company to report the newly required data:

- **Conduct a self-analysis to assess your risk.** Employers have time to identify and address potential pay disparities before the expected new requirements become effective in 2017.
- **Identify system needs.** As proposed, the new report would require new programs or updates to systems to minimize the data collection and reconciliation burdens. Assess the costs of such changes, and consider budgeting for them.
- **Verify that you will be required to comply.** Employers that haven’t previously filed but have reached the 100-employee threshold are required to file EEO-1 reports. The EEOC may use a failure to file an EEO-1 as support for a substantive discrimination claim.



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