

JULY 13, 2016 | REGULATORY & GOVERNMENT OVERSIGHT

EEOC Issues Revised Proposal to Collect Pay Data from Employers

The U.S. Equal Employment Opportunity Commission (EEOC) has announced the publication of its revised proposal to collect pay data through the demographic-related Employer Information Report, otherwise known as the EEO-1 Report. After an initial public comment period, EEOC has proposed changes such as moving the due date for the enhanced EEO-1 Reports from Sept. 30, 2017 to **March 31, 2018**, to allow employers more time to change their recordkeeping and reporting. The comment period for the revised proposal will remain open until August 15, 2016.

Under existing requirements, the EEO-1 Report must be filed annually with the EEOC by private employers with 100 or more employees as well as federal contractors with 50 or more employees that meet certain eligibility requirements. Significantly, private employers with fewer than 100 employees also are subject to this reporting requirement where they operate with an affiliated business as a joint enterprise such that together the group employs 100 or more employees. The EEO-1 Report presently requires the identification of the workforce by job category, and race/ethnicity and gender.

In late January 2016, the EEOC began soliciting public comments on proposed changes to the EEO-1 Report requiring that the data collection include information on pay ranges and hours worked for *employers with 100 or more employees*. As reported by the EEOC, federal agencies including the EEOC and Department of Labor “would use this pay data to assess complaints of discrimination, focus agency investigations, and identify existing pay disparities that warrant further examination.” Secretary of Labor Thomas E. Perez has stated that the “data collection also gives the Labor Department a more powerful tool to do its enforcement work, to ensure that federal contractors comply with fair pay laws and to root out discrimination where it does exist.”

The revised form will require reporting of employee numbers and total hours worked according to pay bands. These pay bands are based on calendar year W-2 income, which includes base salary as well as overtime pay, bonuses and commissions. These reports are designed to show pay discrepancies by race/ethnicity and gender within specific job categories.

While it remains to be seen how federal agencies will use this pay data, it will certainly provide fodder for agencies investigating or litigating discrimination claims. In addition, although the EEOC purports to maintain these EEO-1 Reports in confidence, private litigants are expected to seek this packaged pay data from employers as statistical evidence to support race or gender discrimination claims. This pay data can quite easily be taken

out of context by plaintiffs' attorneys, and employers may find themselves in the defensive position of explaining the non-discriminatory reasons for the pay differential.