

# Employers May Soon Be Required To Report Pay Information in Their EEO-1 Reports

## Labor & Employment Law Update

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Employers, including federal contractors, who are required to file annual Employer Information Reports (also known as EEO-1 reports) with the U.S. Equal Employment Opportunity Commission (EEOC) and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), may soon have additional reporting requirements. Currently, employers with more than 100 employees and certain federal contractors with 50-99 employees, have to report the number of full-time and part-time employees by sex, race, ethnicity and job category on their EEO-1 reports.

The EEOC recently announced a revision to the EEO-1 report to add aggregate pay data on pay ranges and total hours worked for employers, including federal contractors, with 100 or more employees. Federal contractors with 50-99 employees would not report the aggregate pay data but would continue to report the other required information. The announcement was made on January 29, 2016 at the White House Equal Pay Event commemorating the anniversary of the Lilly Ledbetter Fair Pay Act. The Chair of that event noted that the EEOC has made equal pay a national priority.

The proposed revision was made after commissioning independent studies and gathering input from various sources. The EEOC and the OFCCP will use the information to detect pay discrimination and trends in occupations and industries. The federal agencies also believe the information will help employers assess their own pay practices.

The pay data would be based on employees' W-2 earnings. For each of the defined EEO-1 job categories (Executive/Senior Level Officials and Managers, First/Mid-Level Officials and Managers, Professionals, Technicians, Service Workers, etc.), employers would have to include the number of employees by sex, race and ethnicity that fall in certain defined pay bands. In determining which pay band is appropriate, employers would use employees' total W-2 earnings for a 12-month period looking backward from a pay period between July 1<sup>st</sup> and September 30<sup>th</sup>. The total number of hours worked by the employees in each pay band would also be reported.

The EEOC and OFCCP plan to develop statistical software to analyze the reported data. It is not yet clear what will be considered as a discriminatory pay practice. Perhaps most concerning to employers is that non-discriminatory factors (such as differences in experience or education) will not be reflected in any statistical analysis because, under the current proposed rule, there is no provision for collecting that information.

The proposed revision, which is available on the Federal Register website, was published on February 1 and is open for public comment through April 1. The EEOC will consider any public comments and hold a public hearing before publishing the final rule. The final rule would take effect for the September 2017 EEO-1 reports.

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