



EEOC Revises Controversial Proposed Rule on Pay Data Collection

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On July 13, 2016, the Equal Employment Opportunity Commission (EEOC) announced its revised proposal to collect pay data through the Employer Information Report (EEO-1). The EEO-1 report is the joint information collection program run by the EEOC and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). The EEO-1 must be filed annually by certain large employers—namely, private employers with 100 or more employees, and federal contractors with 50 or more employees. The data now collected by the currently-approved EEO-1 is limited to data about employees' ethnicity, race, and sex by job category. The new proposal, which was published in the Federal Register on July 14, is an amended version of the EEOC's controversial initial proposed rule published earlier this year.

The EEOC published its first notice of the initial proposed rule on February 1, 2016, which was followed by a 60-day comment period. The proposal expanded the EEO-1 to require *any business* with 100 or more workers to provide detailed information about its pay practices to the federal government through the annual EEO-1 Report. The proposal included an obligation to report W-2 income and hours worked by job category, in addition to the currently-required employee information. The stated purpose for collecting the additional pay data is to assist the agencies in identifying possible pay discrimination and assist employers in promoting equal pay in their workplaces.

The EEOC received over 300 public comments in response to the initial proposed rule from individual members of the public, employers, employer associations, members of Congress, civil rights groups, women's organizations, labor unions, industry groups, law firms, and human resources organizations. At a public hearing in March of this year, the EEOC heard from fifteen witnesses representing a range of stakeholders including employers, employees, and academics. On June 22, 2016, EEOC Chair Jenny Yang announced that the agency would soon issue a revised version of its proposed pay data collection rules in an effort to "think about how we minimize the burden on employers."

Although the updated proposal still requires all businesses employing 100 or more workers to begin supplying the same pay data, it incorporates certain revisions in response to the public comments

received by the EEOC. For example, while the initial proposal required covered employers to file their reports for 2017 employment information by September 30, 2017, the new proposal pushes back the due date to March 31, 2018. The change is intended to reduce the burden on employers by making it possible to use existing 2017 W-2 pay reports. Other changes include establishing a calculation period based on the calendar year, changing the "workforce snapshot" period for counting employees to allow employers to select a pay period of their choosing between October 1 and December 31 of the reporting year, and providing additional guidance on how to report hours worked by exempt employees.

The revised proposal may be reviewed on the **Federal Register website**. Members of the public will have 30 days until August 15, 2016 to submit written comments to the U.S. Office of Management and Budget (OMB), the agency responsible for approving federal information collections.

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