



EEOC Seeks Additional Pay Information from Large Employers

FEBRUARY 5, 2016 | PUBLICATIONS

In a nutshell –

Last week, the EEOC unveiled its [proposal](#) to seek increased amounts of data from large employers in a stated effort to “combat the persistent gender gap in employee compensation.” Practically, the proposal revises the EEO-1 form. The EEOC’s proposed changes to the EEO-1 form will require all employers with 100 or more employees to submit the new EEO-1 form and provide substantial information regarding pay ranges and hours worked as well as salary data by race, gender and ethnicity.

Ceremoniously, the White House’s announcement of the proposal was made on the seven year anniversary of the Lilly Ledbetter Fair Pay Act. Both the EEOC and the Obama administration are touting this proposal as a means to shine a light on and ultimately shrink the pay gap between men and women.

What this means for employers –

Employers have justifiable concerns about this proposal. Those concerns fall into at least three categories: (1) administrative burdens, (2) increased exposure to enforcement actions, and (3) confidentiality.

With respect to the first concern, at the very least the proposal will impose new substantial administrative burdens on employers with more than 100 employees. The EEOC claims that the burden will be “minimal,” but this assertion is unrealistic and belies the EEOC’s lack of understanding of administrative burdens faced by mid-sized and large businesses. There is little question that the proposal will require a substantial investment of employer time and resources in order to comply.

Second, on the enforcement issue, it is clear that the driving force behind this proposal is to enable the EEOC to identify alleged pay disparities and bring discrimination investigations. The issue of enforcing equal pay laws has been part of the EEOC’s [strategic enforcement plan](#) for the period ending in 2016. This is troubling for employers because the provision of this level of data has the potential for creating “false positives” regarding alleged discrimination. Further, when setting employee wages employers typically take into account a variety of factors, including subjective factors, that will not be reflected in the raw data. Without this important context, employers can be at risk for enforcement actions even when no discrimination in fact exists.

Third, the proposal does not adequately address confidentiality concerns that employers have in disclosing massive amounts of pay data to the federal government. While the EEOC has stated that it will keep this information confidential, the EEOC has not explained how it can do so in the face of the Freedom of Information Act (“FOIA”). There is certainly no guarantee that an employer’s confidential data could not be subject to a FOIA request from an employer’s competitor.

Predictably, the EEOC believes that this increased reporting is actually in employers’ best interests. Specifically, the Secretary of Labor, Thomas E. Perez, [stated](#) “[w]e expect that reporting this data will help employers to evaluate their own pay practices to prevent pay discrimination in their workplaces.” However, it is clear that the purpose of the proposal is not to help employers, but rather to “help the federal government enforce the existing equal pay laws.”

Expected timeline –

AUTHORS

- [Jamie N. Cotter](#)
- [Ronald L. Fano](#)
- [Sue K. Willman](#)

RELATED PRACTICES

- [Labor and Employment](#)

BLOG TOPICS

- [Human Resource Solutions](#)

The EEOC published its proposal on February 1. The 60-day public comment period will end on April 1, 2016. The EEOC's goal is to require submission of the new EEO-1 forms beginning September 30, 2017.

If you have any questions or comments please feel free to contact your [Spencer Fane](#) employment attorney. If you do not regularly work with a Spencer Fane employment attorney, please contact [Jamie Cotter](#), [Sue Willman](#), or [Ron Fano](#) with any questions.