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EEOC Wants More Information From Large Nonprofits

03.22.16 | Linda J. Rosenthal, JD

Exempt organizations with 100 or more employees may want to comment on a recent proposal by the federal Equal Employment Opportunity Commission (EEOC) to significantly beef up certain reporting requirements imposed on all employers including large nonprofits.

Specifically, the EEOC wants to require, beginning in 2017, that all such entities report employee compensation and hours worked – in addition to the information currently gathered on the Form EEO-1.

Time is of the essence; the public comment period ends on April 1, 2016.

EEOC Enforces Federal Anti-Discrimination Laws

What, exactly, is the EEOC and why does it need so much information ?

The EEOC is not a federal department or agency; it's a bipartisan commission created as part of the historic Civil Rights Act of 1964. That landmark law targeted discrimination in employment, voting, public accommodations, and education. "omnibus bill addressing not only discrimination in employment, but also discrimination in voting, public accommodations, and education as well." It is – "

> *responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.*

It has nationwide jurisdiction over most employers with at least 15 employees (and, for age discrimination cases, firms with at least 20 workers) and "for all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits."

Proposed Reporting Requirement

Under current rules, large employers, including nonprofits, are already required to file Form EEO-1, the Employer Information Report. They must provide the sex, race, and ethnic background of their employees.

The proposed rule expands the scope of EEO-1 reporting to include "pay data from employees' Forms W-2 and their total numbers of hours worked, according to employee job category, sex, race, and ethnicity." In order to protect employees' privacy, the data is grouped under 12 pay levels.

The Commission's Rationale

The proposed rule change was announced on January 29, 2016, during the White House ceremony commemorating the 7th anniversary of passage of the Lilly Ledbetter Fair Pay Act:

> *This new data will assist the agency in identifying possible pay discrimination and assist employers in promoting equal pay in their workplaces.*

"More than 50 years after pay discrimination became illegal it remains a persistent problem for too many Americans," said EEOC Chair Jenny R. Yang. "Collecting pay data is a significant step forward in addressing discriminatory pay practices."

The EEOC intends to publish the aggregate data to help employers evaluate their pay practices. It will also be used in enforcement proceedings.

Possible Concerns of Nonprofits

In addition to the added reporting burden, "nonprofit employers may wonder whether such pay data is vulnerable to disclosure to third parties through the Freedom of Information Act (FOIA)."

> *The EEOC already jointly collects EEO-1 data with the Office of Federal Contract Compliance Programs (OFCCP). For nonprofits subject to the OFCCP's jurisdiction, the pay data, like other EEO-1 data, would be kept confidential to the maximum extent permitted by law. For all others, the Commission would not release employer data to the public "prior to the institution of any [Title VII of the Civil Rights Act of 1964] proceeding … involving such information. Thus, it appears that pay data is no more or less vulnerable to disclosure under FOIA than current EEO-1 information.*

Conclusion

More information, including a Fact Sheet for Small Business and Questions and Answers are available on EEOC's website at www.eeoc.gov.

Affected nonprofits, and other members of the philanthropy community, should review these materials and let the Equal Employment Opportunity Commission know their opinions of this proposed change by the April 1, 2016 deadline.