

New EEOC Reporting Duties for Large Nonprofits

11.16.16 | Linda J. Rosenthal, JD



One of the signature accomplishments of the Obama Administration was the 2009 passage of the Lilly Ledbetter Fair Pay Act.

So, back in January 2016, on [the 7th anniversary](#) of that landmark legislation, the President was pleased to announce a proposed new initiative of the Equal Employment Opportunity Commission (EEOC) that will help root out instances of unfair and unequal pay.

All employers – including nonprofits – with more than 100 employees already have to file Form EEO-1, which currently includes certain reporting requirements. The proposed changes to Form EEO-1 include “[significantly beef\[ed\] up](#)” disclosure mandates; specifically, there are new duties to report “summary pay data, broken down by gender, race, and ethnicity.”

Following standard practice, the EEOC announced a two-month, public-comment, period from late February to April 1, 2016.

In mid-March, we wrote a post on this proposed action, urging affected nonprofits to consider the matter and, perhaps, submit a comment. In “[EEOC Wants More Information From Large Nonprofits](#),” we explained that nonprofit sector employers might object not only to the added reporting burdens, but also from concerns about [whether such pay data is vulnerable to disclosure](#) to third parties through the Freedom of Information Act (FOIA).

New Equal Pay Reporting Rule Approved

On September 29, 2016, the [White House announced](#) that the amendments to Form EEO-1, as proposed, had been accepted and approved by a vote of the Commission:

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Today, the EEOC, in cooperation with the Department of Labor, is publishing its finalized revisions to its EEO-1 form, which for the first time will collect summary pay data, broken down by gender, race, and ethnicity, from all businesses with 100 or more employees. This data collection, which stems from a recommendation by the President’s Equal Pay Task Force and a Presidential Memorandum issued in 2014, is expected to cover roughly 63 million employees and 60,000 employers.

The purpose of this plan is to improve “voluntary compliance by employers with existing equal pay laws,” and to help the EEOC and the DOL’s Office of Federal Contract Compliance Programs (OFCCP) to “better focus investigations on employers who are illegally shortchanging workers’ pay based on their gender, race, or ethnicity.” It is also designed to “help employers evaluate their own pay practices to prevent pay discrimination....”

By way of background, while the Department of Labor is a cabinet-level agency of the executive branch, the Equal Employment Opportunity Commission “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. The EEOC is

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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.

The Commission 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.”

What the New Requirement Means For Large Nonprofits

The EEOC already jointly collects EEO-1 data with the Office of Federal Contract Compliance Programs (OFCCP). 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 newly approved 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. Employers will not be required to disclose individual employees’ salaries. Employers will first be required to submit pay data for 2017 by March 31, 2018, giving them 18 months to prepare for the change. This revision does not impact the 2016 EEO-1 report, which was due on September 30, 2016, and is unchanged.

Conclusion

EEOC will offer webinars and technical assistance to employers, payroll and human resource information system providers, and other stakeholders in preparation for the new submission requirements. More information, including Questions and Answers, is available on EEOC’s website at www.eeoc.gov.