

NLAP Newsletter: New EEO-1 Pay Equity Reporting Requirements

Today, President Obama is expected to announce new pay equity reporting requirements that would require employers to disclose information concerning compensation and hours worked with their annual EEO-1 reports.

According to an EEOC publication in the [Federal Register](#), starting in 2017, employers with more than 100 employees will be required to report “W-2 earnings and hours worked” on their annual EEO-1 reports. Employers with less than 100 employees would not be required to submit this additional information.

The EEOC stated in its publication that it chose W-2 data because it “provides a more comprehensive report of earnings at the employee level.” The EEOC has proposed using “pay bands” for reporting W-2 data to maintain employee anonymity. The “revised EEO-1 will collect aggregate W-2 data in 12 pay bands for the 10 EEO-1 job categories” already used. “Employers will simply count and report the number of employees in each pay band.” The EEOC believes that this process will “allow the EEOC to compute within-job-category variation, across-job-category variation, and overall variation, which would support the EEOC’s ability to discern potential discrimination while preserving confidentiality.”

For hours worked, the EEOC “will collect the total number of hours worked by the employees included in each EEO-1 pay band cell.” The EEOC believes that this data will “allow analysis of pay differences while considering aggregate variation in hours.” The EEOC specifically stated that it is “not proposing to require an employer to begin collecting additional data on actual hours worked for salaried workers, to the extent that the employer does not currently maintain such information.” The EEOC stated that it is specifically seeking input as to the manner of collecting hours worked for salaried employers.

In addition to the new W-2 data and hours worked requirements, the EEOC proposed that all employers required to file EEO-1 reports file their EEO-1 report electronically beginning in 2017. The EEOC believes that this will present only a minor burden as a large portion of filers already file electronically.

This development comes in the wake of President Obama’s April 8, 2014 Memorandum directing the Secretary of Labor to develop a compensation data collection proposal. In response to that Memorandum, the Office of Federal Contractor Compliance Programs (“OFCCP”) published a proposed rule, adding a requirement that contractors submit

“compensation data reports” to OFCCP. According to the EEOC, public comment on this proposed rule revealed the “need to improve interagency coordination and decrease employer burden for reporting compensation data by using the EEO-1, rather than a new OFCCP data collection, as well as the need to protect privacy and data confidentiality.” The EEOC stated that the current EEO-1 proposal “responds to these concerns.” While not explicitly stated, it appears from the EEOC’s publication that this new requirement is intended to replace the OFCCP’s proposal, which would have applied only to government contractors, with the present proposal, which applies to all employers over a certain size.

This proposal shows the Administration’s continuing emphasis on pay equity. Employers are encouraged to follow this development and consider the impact that the additional reporting may have on current business practices. It would be advisable given this new reporting requirement (and the many other initiatives addressing pay equity) that employers undertake a privileged audit of their pay policies and practices. As part of that process, employers could identify whether any “red flags” would be identified by the EEOC in connection with the analyses contemplated by the new reporting requirements, and address any problem areas before the reporting obligation becomes mandatory. Employers are also encouraged to submit comments to the proposed rule once the notice and comment period has opened.