

AFFIRMATIVE ACTION UPDATE

**** NEWS FLASH ****

Volume 16, No. 2

Douglas B. Brown, LLC

February 5, 2016

EEOC PROPOSES ADDING PAY DATA COLLECTION TO EEO-1 REPORT

On February 1, 2016, the EEOC published in the Federal Register proposed regulations to require employers with 100 or more employees to submit pay data along with their regular EEO-1 reports. The proposed changes would be effective with the EEO-1 filing for September 2017. The proposal also ends any efforts on the part of the OFCCP to implement their own compensation data collection protocol.

While the EEO-1 would continue to collect gender/race/ethnicity data by EEO-1 category, the proposal would require the submission of pay data and hours worked by EEO-1 category and by 12 salary bands mirroring the bands used by the Bureau of Labor Statistics (BLS) in the Occupational Employment Statistics Survey. Employers would not have to provide actual wage data. Rather, they would be required to report how many employees, broken down by gender/race/ethnicity, had W-2 earnings by EEO-1 category and salary band. In addition, employers would have to report total hours worked by the employees in each band by race/gender/ethnicity.

Employers cannot use annual W-2 earnings for the purpose of preparing the report. Rather, employers would have to perform a 12-month look back from any point between July 1st and August 31st. In the proposal, the EEOC states that HRIS/payroll systems will allow employers to easily annualize this amount, in essence requiring employers to now come up with a second W-2 report for each employee.

The proposal states that the EEOC's efforts are being coordinated with the OFCCP. Therefore, just as the EEO-1 data from government contractors and subcontractors collected by the EEOC is shared with the OFCCP, the EEOC will also be sharing the compensation data collected from government contractors/subcontractors with more than 100 employees with the OFCCP. While it is indicated that the OFCCP will use the data to target employers for compliance reviews, it is not clear how the EEOC will use the data from non-government contractors/subcontractors, as the EEOC is primarily charge-driven as opposed to initiating enforcement activity on their own.

There are many obvious and significant issues with the proposal, including, but not limited to:

- Will employers be able to create mid-year W-2's?
- Will employers be able to use their payroll/HRIS systems to identify the gender/race/ethnicity by W-2 earnings reports?
- What will be involved in determining total hours worked by EEO-1 Category, Salary Band, and Gender/Race Ethnicity?
- Will employers be able to use their payroll systems to determine total hours worked?
- What will employers report for exempt employees for whom they may not track hours worked?

The issues and questions arising from this proposal are significant and wide-ranging for employers with 100 or more employees.

The EEOC is now accepting comments on the proposal until April 1, 2016. There will be a public hearing on the proposal to be held sometime between February 21 and April 1, 2016. Employers concerned with the burdens of complying with the proposal are encouraged to either comment directly to the EEOC or through their employer organization.

In the meantime, there is little else for employers to do. This is still in the proposal stage. The final outcome, or whether or not any proposal is ultimately implemented, is simply too speculative, particularly in this election year. We will continue to monitor the status of the proposal and provide updates as they become available.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrow.com. The discussion of this matter is for the clients and friends of Douglas B. Brown, LLC and does not represent nor is intended as a substitute for professional legal advice.