

EEOC Releases Final Reporting Form for Compensation Data

The Equal Employment Opportunity Commission (“EEOC”) has finalized a reporting form that requires certain employers to report summary compensation data categorized by gender, race, and ethnicity. Beginning on March 31, 2018, and going forward on an annual basis, employers who are required to file an EEO-1 (all employers with 100 employees or more and all federal contractors and first-tier subcontractors with 50 or more employees and at least \$50,000 in contracts), need to report their summary pay data, based on W-2 wage information, for the previous calendar year.

Employers will need to report annual salaries for employees by job category, sex, and race/ethnicity. The EEOC plans on using the submitted data in order to target “outlier” employers for pay equity investigations. The EEOC has not developed or released any plan specifying how the reported information will be used. However, the EEOC has stated that it will publish “industry-specific reports” that specify what employees earn on average based on their different employment categories. Employers whose female and minority employees earn less than those industry averages should be ready to justify their salary structure policies and practices. Practically speaking, because this information will be available to the public, employers may also have to explain their policies to individual employees who learn they are being paid less than the industry average.

What Employers Need to Know:

- **Start Thinking about the Future Now:** Even though the reporting requirements don’t begin until March 2018, the data to be reported will date back to January 1, 2017. When finalizing 2017 budgets, keep in mind that the salaries and pay rates you are establishing now are the first ones that will be scrutinized by the EEOC.
- **While we’re talking about budgets...** One of the biggest concerns employers have with the new reporting requirements is that employers will likely need to gather information from multiple systems. A majority of employers maintain race and sex data in one system, W-2 information in another system, and hours worked in yet another system. All of this information will now need to be reported. Employers will

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need to test their current systems and make sure they budget for any new programs or codes that will be needed to improve efficiency.

- **Be Proactive...** Gather your information now and review it with a critical eye. Take the time to identify any pay gaps and discrepancies before you need to send the information into the government. If you find pay differences among different protected classes, look hard to determine if you have legitimate reasons for the pay disparities. Examples of legitimate reasons for discrepancies include education levels, prior training and experience, client knowledge, or geographic location.
- **But Not Too Proactive...** If you decide you want to give the reporting requirements a trial run and complete an internal audit in order to catch any possible pay disparities, keep in mind that your audit materials will likely be discoverable in any future disputes with the EEOC. Your best option is to engage outside counsel to conduct the audit in order to help ensure that your findings are protected by attorney client privilege.