EEOC Unveils Updated Pay Data Proposal

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On July 13, 2016, the U.S. Equal Employment Opportunity Commission ("**EEOC**") revealed its latest updates to its proposed pay data collection rule applicable to federal contractors and employers with more than 100 workers. After reviewing over 300 comments from affected organizations, the EEOC has chosen to push back its deadline for employers to file their first reports under the new requirements from September 30, 2017 to March 31, 2018. Because of this deadline shift, employers will not only have more time to prepare for the new report, but they will also be able to use data collected from W-2 pay reports calculated for the previous calendar year. For 2016, however, the EEO-1 deadline remains September 30, 2016, and employers should use the existing EEO-1 form.

As previously announced, the proposed pay data rule requires employers to report information regarding employee pay ranges and hours worked in addition to the race, ethnicity and gender data already required on the EEO-1 report. The purpose of this additional requirement is to generate data to help identify pay disparities across industries, occupational categories, and within organizations themselves. Armed with this data, the EEOC and Office of Federal Contract Compliance Programs believe they can more effectively assess complaints of discrimination and better target their investigations and resources toward problem areas.

Many businesses, management-side firms and trade groups are critical of this new rule because, while it is clear it will increase the reporting burden on employers, it is less clear whether this data will result in any meaningful analysis. The revised proposal does not address some employers' concerns that the data may be misinterpreted. There may, for instance, be legitimate reasons for pay disparities that are not included on the report.

The EEOC is accepting comments through August 15, 2016, so concerned organizations still have time to voice their input on the revised proposal. However, it is unlikely that there will be many further substantive revisions, so employers should make sure that they have a system in place that will allow them to meet these additional reporting requirements.

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