Akin Gump
STRAUSS HAUER & FELD LLP

Labor and Employment Alert

February 10, 2016

If you read one thing...

- The EEOC has announced a proposal to start collecting employee compensation information from companies with 100 or more employees, and is seeking comments, which are due by April 1, 2016.
- The EEOC's announcement is just the latest regulatory development regarding employee compensation issues.
- Companies should expect a continued focus on potential pay disparities between male and female employees (as well as disparities based on employees' race and ethnicity).

EEOC to Collect Pay Data from Large Companies

On January 29, 2016, President Obama announced that the Equal Employment Opportunity Commission (EEOC), in partnership with the U.S. Department of Labor, has issued a proposed plan to begin collecting employee compensation information pay data from companies with 100 or more employees.

Currently, companies with 100 or more employees are required to submit annual EEO-1 reports that include data about employees' ethnicity, race and sex by specified job categories (including "Executive/Senior Level Officials and Managers," "First/Mid-Level Officials and Managers," "Professionals," "Administrative Support Workers," "Service Workers," "Sales Workers," "Technicians"). Under the EEOC's new proposal, covered companies would also be required to submit aggregate information regarding employees' compensation and hours worked, in each case, as associated with employees' ethnicity, race and sex, and the current EEO-1 job categories. The EEOC is seeking comments regarding its new proposal, which are due by April 1, 2016. A public hearing concerning these possible changes will be held at a to-be-announced time and date, and written requests to orally present an opinion at this hearing are due by February 22, 2016.

The proposed EEO-1 reporting form includes 12 annual salary bands, with the lowest band covering workers earning approximately $19,000 and under, and the highest band covering workers earning over approximately $200,000. The pay bands become progressively larger, with a $4,000 difference within a band on the low end, and as high as a $40,000 difference within a band at the top. To determine the appropriate salary band, compensation information would be reported based on W-2 income, including wages, bonuses and taxable fringe benefits.

In order to attempt to account for part-time work, and those who have not worked an entire year, the EEOC has proposed collecting aggregate "hours worked" information for both non-exempt and exempt employees. The EEOC has not made a proposal on how “hours worked” information should be reported for exempt employees, and is requesting input from the public, presumably understanding that most employers do not track the hours worked by their exempt personnel.

Companies will have some lead time once the proposed changes become final. Under the EEOC’s timeline, companies would not begin reporting the additional data until the September 2017 reporting cycle.

The EEOC’s new initiative is yet another measure—on top of legislation, such as the recently amended New York Equal Pay Law, discussed here—and California’s Fair Pay Act, discussed here—aimed at identifying and addressing pay disparities between male and female employees (as well as pay disparities based on employees’ race and ethnicity). The new EEO-1 requirements are intended to “help focus public enforcement of [the] equal pay laws and provide better insight into discriminatory pay practices across industries and occupations,” making it easier for the EEOC to pursue claims alleging systemic discrimination.

A copy of the EEOC’s complete proposal is available here, and the proposed new EEO-1 form, including the addition of employees’ earnings data and hours worked, is available here.

Contact Information

If you have any questions regarding this alert, please contact:

Esther G. Lander
elander@akingump.com
202.887.4535
Washington, D.C.

Donald R. Livingston
dlivingston@akingump.com
202.887.4242
Washington, D.C.

Richard J. Rabin
rrabin@akingump.com
212.872.1086
New York

Desiree E. Busching
dbusching@akingump.com
212.872.1061
New York