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Hedge Up

A Heads-Up on Employment Issues Confronting the Hedge Fund Industry

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If you read one thing...

- The EEOC has announced plans to collect employee compensation information from firms with 100 or more employees.
- The EEOC's announcement is just the latest regulatory development regarding employee compensation issues.
- Firms 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 Firms

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

Currently, firms 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" and "Service Workers"). Under the EEOC's new proposal, covered firms would also be required to submit 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.

In calculating an employee's compensation for reporting purposes, firms must include all W-2 income, including all wages, bonuses and taxable fringe benefits. Notably, however, the EEOC does not appear poised to collect information regarding non-W-2 income, such as carried interest or other income with respect to equity ownership.

The requirement that firms report employees' hours worked extends to all employees, both non-exempt and exempt. This requirement is likely to impose new administrative burdens on large firms, which generally have no reason to track the hours worked by their exempt personnel.

Firms have some lead time before they need to begin reporting employee compensation and hours information. Under the EEOC's proposal, firms will need to begin reporting the additional data in the September 2017 reporting cycle. At the same time, firms should view the EEOC's new initiative as yet another measure—on top of legislation, such as the recently amended New York Equal Pay Law, as reported in our October 26, 2015 Hedge Up article available 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.

The EEOC is seeking comment from firms and others regarding its new proposal. Any such comments are due by April 1, 2016.

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:

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

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

Lauren Helen Leyden
lleyden@akingump.com
212.872.8172
New York

R.D. Kohut
rkohut@akingump.com
212.872.7488
New York

Anastasia Marie Kerdock
akerdock@akingump.com
212.872.7432
New York

Jeffrey L. Wiener
jwiener@akingump.com
212.872.8084
New York