August 31, 2017

Revised EEO-1 Reporting Requirements Stayed Indefinitely

On August 29, the Office of Information and Regulatory Affairs (OIRA), which sits within the Office of Management and Budget (OMB), issued a memorandum staying indefinitely the expanded reporting requirements of the new EEO-1 form. The expanded reporting requirements were scheduled to go into effect on March 31, 2018, and would have obligated employers with more than 100 employees (or federal contractors with more than 50 employees) to submit data on pay and hours worked for their entire workforce by gender and race/ethnicity. The now-stayed expanded reporting requirements would have necessitated that for each of the 11 EEO-1 job categories, an employer would need to provide the number of employees in each of the 12 pay bands broken down by race/ethnicity and gender and to include the total hours worked by those employees. This included providing approximately 3,660 pieces of information on the employees in each workforce required to report.

When the Equal Employment Opportunity Commission (EEOC) issued the revised EEO-1 form in September 2016, its stated intent was to gather data to assist the Commission with identifying and remedying gender-based pay disparities in the workplace. However, the new EEO-1 form received wide criticism because the additional information collected is of questionable value given the magnitude of divergent jobs within each EEO job category.

The OIRA's Administrator, Neomi Rao's August 29 memorandum addressed to Acting Chair of the EEOC, Victoria Lipnic, ordered an immediate stay of the effective date of the new requirements of the EEO-1 form and "initiat[ed] a review" of the EEOC's proposed expanded data collection. In her memorandum, Administrator Rao expressed concerns about the expanded data collection including that "some aspects of the revised collection of information lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues."

Although the OIRA has stayed the pay and hours worked data collection aspects form of the revised EEO-1 form, covered employers still are required to complete and submit the prior version of the EEO-1 form for 2017 by March 31, 2018.

The OIRA's decision is welcome news for employers and saves them from the significant burden the expanded data collection would have imposed. It does not, however, diminish the increasing legal risk that pay equity issues may present. Following the OIRA's release of its memorandum, Acting EEOC Chair Lipnic issued a statement indicating the "EEOC remains committed to strong enforcement of our federal equal pay laws" and "[the OIRA's] decision will not alter EEOC's enforcement efforts." Additionally, pay equity legislation on the state and local levels aimed at aiding employees in bringing pay equity claims, prohibiting employers from inquiring about an applicant's salary history and addressing pay transparency issues has been sweeping the country. Employers should continue to monitor developments regarding the status of the OIRA's review of the EEO-1 form as well as the evolving pay equity legislation landscape to ensure their pay practices comply with federal, state and local laws.

Authors



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com