

September 1, 2017

The Office of Management and Budget Hits the Brakes on the Revised EEO-1

By Lynne Anne Anderson, Kate S. Gold and Philippe A. Lebel

Last year, the U.S. Equal Employment Opportunity Commission (EEOC) unveiled its proposed revisions to the Employer Information Report EEO-1 (EEO-1). Previously, the EEO-1 directed federal contractors and employers with 100 or more employees to report annually the number of individuals that they employ by job category, race, ethnicity and gender in 10 different job groupings. As part of the Obama administration’s enhanced focus on equal pay, the EEOC’s proposed EEO-1 revisions aimed to expand the information collected to include pay data and working hours to help the EEOC discover potential discrimination in employment and pay equity.

The EEOC finalized its new EEO-1 in September 2016, and the additional information was to be provided by employers by the next reporting deadline in March 2018. That was the plan until the Office of Management and Budget (OMB) stepped in.

On August 29, 2017, Neomi Rao, Administrator at the OMB’s Office of Information and Regulatory Affairs, issued a memorandum to the EEOC’s Acting Chair, Victoria Lipnic, that notified the EEOC that, “in accordance with the Paperwork Reduction Act (PRA) and its regulations,” the OMB was “initiating a review and immediate stay of the effectiveness of those aspects of the EEO-1 form that were revised on September 29, 2016.” The revisions under review—the implementation of which are stayed—include the additional information regarding wages and hours of work. Employers are still obligated to provide the information required by the previous version of the EEO-1 survey.

Although the timing was unknown, the OMB’s decision to review the regulations was not unexpected. The OMB’s memorandum comes on the heels of months of strong industry opposition, most notably from the U.S. Chamber of Commerce. In March 2017,

the EEOC’s newly appointed Acting Chair, Lipnic, expressed her own concerns about the new EEO-1 requirements, while stressing that the agency remained committed to its underlying objectives. At that time, Lipnic indicated her belief that it was only a matter of time before the OMB decided to review the proposed new requirements.

The OMB’s August 29 memorandum outlined several issues with the new requirements, including that the EEOC did not provide an opportunity for public comment regarding the data file specifications and/or the data upload process. More generally, the OMB’s memorandum expressed concerns that “some aspects of the revised [EEO-1] collection of information lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues.”

The result is that the EEOC will need to provide the OMB with additional information before any changes are finally implemented. In the interim, the previously proposed wage and hour reporting requirements are suspended. Employers should continue to monitor developments in this area in advance of the 2018 fiscal year reporting deadline.

Despite the OMB’s decision to review the EEOC’s proposed EEO-1 revisions, Acting EEOC Chairwoman Lipnic has emphasized that the agency remains committed to investigating and enforcement with respect to gender discrimination and pay equity. At the state level, there is a considerable amount of activity in state legislatures concerning the issue of pay equity, and California has already begun to see an uptick in pay discrimination litigation under its revised statute. Thus, despite the stay on the EEO-1 pay reporting requirements, employers should remain focused on pay equity—including by conducting comprehensive pay audits.

Labor and Employment Team

Primary Contacts



Lynne Anne Anderson
Partner
Florham Park
(973) 549-7140
lynne.anderson@dbr.com



Kate S. Gold
Partner
Los Angeles
(310) 203-4029
kate.gold@dbr.com



Philippe A. Lebel
Associate
Los Angeles | San Francisco
(310) 203-4091
philippe.lebel@dbr.com