



# The EEOC Wants Your Compensation Data

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The Equal Employment Opportunity Commission (EEOC) annually collects workforce data from employers with more than 100 employees, otherwise known as an EEO-1 Report. Currently, employers are only required to provide census data regarding gender and race/ethnicity by some type of job grouping. Despite the fact that the data is confidential, aggregated data is available to the public.

The EEOC has recently proposed a major change to the EEO-1 Report. The proposal is currently pending through a 60 day comment period that ends on April 1, 2016. Under the proposal, employers will be required to disclose specific compensation data with their September 2017 EEO reporting obligations. The proposal requires disclosure of aggregate data on pay ranges and hours worked. Specifically, the proposed reporting requirement involves 12 annual salary bands, ranging from \$19,000 and under, to \$200,000 and over. The job categories are broad and generic, including “Senior Level Managers,” “Midlevel Managers,” “Professionals,” “Administrative,” “Technicians,” “Service Workers” and “Sales Workers.”

In its press release, the EEOC noted that the “new pay data would provide EEOC ... with insight into pay disparities across industries and occupations and strengthen federal efforts to combat discrimination.” Employment litigators refer to this as free discovery. Without question, ensuring equality in pay for employees doing the same work is a laudable goal and something for which all employers should strive, but that objective is apt to be overshadowed by the concerns associated with the EEOC’s proposal, several of which are noted below:

## 1. A new reporting mandate for employers.

Most employers do not track compensation data in the manner that the EEOC has proposed. Additional time and resources will have to be devoted to capturing the data that the EEOC is requiring.

## 2. Greater scrutiny over pay practices based upon unreliable metrics.

The compensation data requested by the EEOC will not account for variations in responsibilities, education, experience, seniority or performance. Without this context, employers will likely face increased risk of being investigated or sued by the government over pay practices, based upon unreliable compensation data.

## 3. Confidentiality issues associated with employer compensation.

Many employers treat their compensation data as proprietary and they do not want their competitors obtaining it. Although the EEOC may agree to treat the information as confidential and not subject to Freedom of Information Act requests, there will be instances where the EEOC fails to abide by confidentiality or is otherwise challenged in refusing to disclose it.

Regardless of whether this proposal is adopted, the EEOC’s action presents a helpful reminder for employers in general, and financial institutions in particular, to review their pay practices and make sure that any pay disparities within specific job categories are tied to identifiable and uniform performance criteria. Financial institutions are often targeted for pay disparity claims based upon gender and age, despite the fact that financial institutions routinely rely on objective performance criteria in setting compensation. Although many of these claims are often without merit, the EEOC’s proposal should encourage all employers to take a close look at their pay practices as additional scrutiny is on the horizon. ■

Should you require more information concerning the legal and business aspects of the above, please feel free to contact the author directly. He is an attorney in the Charleston, West Virginia office of Bowles Rice LLP.



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