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Lisa Nagele-Piazza (00:00)
Welcome to the FP 5, Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Lisa Nagele-Piazza from the Fisher Phillips Content team.

Large employers are familiar with the annual EEO-1 reporting requirement, where they need to submit certain demographic data about their workforce every year to the Equal Employment Opportunity Commission. But the EEOC just sent a game-changing proposal to the White House to end the reporting requirement altogether. Now this news comes as employers are waiting for the portal to open this year, and everyone is wondering if it's even going to open at all.

It's important to note that the EEOC's proposal still has a long way to go before it's finalized, but it's a potentially huge change for employers. Sheila Abron joins us today to break down what you need to know about it. Sheila is a partner at FP in our Columbia, South Carolina office. She also chairs the firm's Government Contracting, Compliance, and Reporting Practice Group. Sheila, thanks for being on the show today.

Sheila Abron (01:05)
Thank you for having me. Hello everyone. Super excited to be here.

Lisa Nagele-Piazza (01:09)
So Sheila, tell us a little bit about your background.

Sheila Abron (01:12)
So I am an employment attorney practicing, I've been with Fisher Phillips for about 10 years. I have a heavy focus on government contracting, reporting, compliance, but do also your traditional employment law issues around advice and counsel. And yeah, that's a little bit about me.

Lisa Nagele-Piazza (01:32)
Great. So tell us a little bit about how your early experience managing employees shaped the way that you approached employment law today.

Sheila Abron (01:39)
Oh this is my favorite thing about being an employer attorney. So management has been one of my favorite things. I've managed a big box retail place as well as a fast food restaurant. And I will tell you just a quick little anecdote about kind of how this all works as I think about it. So one day when I was managing in a big box retail store, we had a customer that slipped and fell. And I had to fill out this incident report and one of the myriad of questions that they asked was who was the last team member to have walked through the area? And it was a busy Saturday. I was easily managing 200 people. And I thought that was the most inane question to be asked of me. I said “I'm managing 200 people. How am I supposed to know who was the last person to walk through this area? And why am I being asked this question?”

And then I get to torts class in law school and I realize that that question is key to whether the employer might be liable in an action. And I was like, oh, it's like a light bulb clicked for me. And I was like, oh, this is what I want to do.

I want to be the person that not only translates laws to meaningful things for managers, but I also want to teach the why. Like I want to be in a place to help explain the why. So that 21, 22-year-old manager that's busy on a Saturday is like completely bought-in, completely understands the need. So that's why I do a lot of advice and counsel. That's why I do a lot of training and development because that has been so impactful for me. All the whys that I had really can inform the way that I, you know, run my practice and give advice to people. You know, it's one thing to say, hey, I can do your Title VII sexual harassment training, but it's another thing to say, hey, I've managed through high school students. Let's talk about what that training might need to look like in ...

Lisa Nagele-Piazza (03:35)
Yeah, absolutely. That's a special skill set.

Sheila Abron (03:45)
I didn't say I'm Liam Neeson with this particular set of skills, but I do have a particular set of skills.

Lisa Nagele-Piazza (03:51)
I feel the same way, being an HR manager before I went to law school really just reshaped everything for me. And I think I really enjoyed the experience more because of it.

Sheila Abron (04:01)
Oh yeah, absolutely. That real-world experience like really teaches you a lot more. And I think it makes you be, I don't know, a lot more nimble in your advice and more practical too.

Lisa Nagele-Piazza (04:18)
First thing for today, I wanted to talk about what EEO-1 reporting is and who needs to do it. So let's take a step back and talk about the bigger picture.

Sheila Abron (04:28)
Yeah, absolutely. I love level setting here. So EEO-1 reporting is a federal report and it applies to two different types of categories of employers. One, you have private employers that have a hundred or more employees. And then the other is federal contractors. So those businesses who are doing business with the federal government with 50 or more employees, annually, they will submit aggregated demographic data to the federal government about their workforce. So a couple of pieces of what that looks like. So when I say aggregated, we are not sending individual names of employees. It is looking at your employees in a, I call them buckets. If you've listened to me on any webinar or anything, I'm big on buckets, but we will categorize the employees based on the type of job that they have, into categories that the federal government has established, whether it's professional, whether it's managers, whether it's laborers and helpers, we categorize individuals into those buckets and then report their race and gender into kind of a spreadsheet tabular form to the federal government. And that is done annually. Or in the case of when there was COVID, there may have been like a little break there.

Lisa Nagele-Piazza (05:51)
Just a little bit.

Sheila Abron (05:52)
Like in most things with COVID, the world kind of was a little weird, but generally that's what that report looks like.

Lisa Nagele-Piazza (05:59)
And what does the government do with this information?

Sheila Abron (06:03)
So the EEOC, so that's a really great question. So that information is taken in by the EEOC and also shared with its sister agency, the Office of Federal Contract Compliance for those federal contractors or OFCCP. Now the EEOC has said that that information can help guide them in enforcement trends. It lets them know a bit about how industries are looking in terms of what that representation may be like. And that they use it for research purposes. Employers, if you're listening, you may have even been asked to submit this information when you've submitted position statements in response to additional inquiries from the EEOC.

Lisa Nagele-Piazza (06:45)
And this is something the EEOC has been collecting for a long time. So the idea of potentially ending it is kind of profound, but we'll get into that next.

Sheila Abron (07:00)
Profound is a word, yes.

Lisa Nagele-Piazza (07:11)
And that brings us to the second thing we'll discuss today. What just happened? What is the administration proposing?

Sheila Abron (07:18)
So the EEOC has proposed to discontinue this reporting requirement. They would like to stop collecting this information from employers, which has been in place for decades. And when I say decades, I don't mean decades like I like to think the 90s were just one decade ago. I mean even farther than that. So this would be a huge change in reporting for the federal government.

Lisa Nagele-Piazza (07:46)
And how do you think this change has come about or what do you think the purpose behind it is?

Sheila Abron (07:50)
So I think, consistent with the administration's approach and priorities along DEI--so that's diversity, equity, inclusion-the administration has taken several steps to change or alter the way that it views content and obligations for employers that might even remotely touch diversity, equity, inclusion, race or gender. And so this is pretty consistent with the approach the administration has taken with regard to these types of matters and this type of reporting. You know, you may have set have known or our federal contracting audience has seen that the Executive Order 11246 related to race and gender affirmative action was revoked very early in the administration last year. So this is kind of consistent with the administration's priorities.

Lisa Nagele-Piazza (08:48)
Yeah, and that brings up the memories of the pay data collection that happened a few years ago. It's been a while now, time flies, but that seems to be consistent with that too, right? Like the different administrations had different ideas on whether or not pay data should be added to the EEO-1 report.

Sheila Abron (09:07)
Yes, exactly. And that led to a really interesting court battle because it happened to your point on the cusp of different administrations. And so we had, you know, a Democratic-led administration really pushing to expand that EEO-1 report to get compensation information in, and litigation ensued. And then kind of in the midst of that, we had a Republican-led administration that wished to back away from that.

And a court ordered that they did need to collect it, but then they ultimately determined they were no longer gonna collect it from that point forward. And I'm sure we'll get to this though, but that gave some states some really interesting ideas on their reporting too.

Lisa Nagele-Piazza (09:50)
Yeah, really. Yeah. That tends to be the way that when the federal government doesn't act on something, some of the states step in, right?

Sheila Abron (09:59)
Yeah, absolutely, absolutely.

Lisa Nagele-Piazza (10:06)
So the third thing I wanted to talk about today, say this reporting gets rolled back. What does it mean for covered employers?

Sheila Abron (10:14)
So it depends on where that employer may be located in terms of their continued need to or their continued desire, I'll say, for collecting this information. So if it does get rolled back at a bare minimum, that is one less reporting obligation that you have as an employer if you're a private employer or a federal contractor.

But then start thinking about how, if at all you are utilizing that information and whether or not there continues to be a reason for you to be reviewing that information or doing that, because we talked about how the EEOC uses that information, but we didn't touch on, and that's probably a longer conversation that I know we don't have time to get into today, but what employers may be doing with that information and having that content for them and how that can help them with some of the things that they may be working on within their organization.

And so, you know, from a practical standpoint, we may see, you know, less obligations from a reporting standpoint, but there are some other reasons why you may have been collecting that information, maintaining that information, or studying that information. So highly recommend that you have a thoughtful kind of approach to how you respond if this is rolled back and making sure you're looping in all of the relevant stakeholders and counsel on that too.

Lisa Nagele-Piazza (11:38)
That's a great point. Yeah. So you might be collecting this information for a variety of reasons, but the reporting requirement itself may go away.

Sheila Abron (11:47)
Yes, absolutely.

Lisa Nagele-Piazza (11:55)
This is the FP5. I'm Lisa Nagele-Piazza, and we're here with Sheila Abron. Sheila is a partner at Fisher Phillips in our Columbia office and chairs our Government Contracting, Compliance, and Reporting Practice Group.
Just a quick reminder: you can find a link to the insight that we have been talking about in our podcast show notes.

And the fourth thing for today: should employers still be preparing for this year's reporting period? I know I think last year the portal to submit the data opened on May 20th. And now here we are past that date and we still haven't heard anything from the EEOC. So do you think that they're gonna open it at all? I know it's kind of impossible to predict. I know this is a, just a proposal at this point in time, but I'm sure a lot of employers are wondering if they should still be preparing because it's a lot of work.

Sheila Abron (12:48)
Yeah, Lisa, I actually have gotten this question two or three times a day for this whole month so yes, this is a primary question that I have been asking. And so one thing that I will say kind of at the outset of this is that while last year's reporting was, you know, kind of in this time period from May to June, it is not uncommon for the reporting time period to be a moving target. And frankly, it has been that way since you know the first years of COVID-19, where we had a year it wasn't done. We've had a collection that was August through September. Two years ago, we had a reporting deadline that was December 5, right? So we have had a moving target, historically though, it is in the spring-summer time period. And so the fact that we don't have a portal open yet this year doesn't mean that it's not going to open. We have had, you know, periods of long-term uncertainty in terms of when it opens.

What I will say is this: typically, when the portal opens, you are going to have four to six weeks to get your reports together. So you are the master of understanding your record keeping, understanding how your HRIS systems work, understanding all of the different levels of resourcing that you're gonna need to get this report together. And so if you think you're probably gonna need longer than that four to six week period, I would go ahead and plan and prepare because the government should still be collecting it this year. We just don't know when.

If you feel like you're gonna be able to gather that information then you can wait until there's an announcement. The, you know, consistent thing about the EEO-1s, maybe not their deadline, but the consistent thing is that the content for the most part is the same thing year over year. So if you're thinking about there's been a handful of changes every now and then, but the core content in terms of your employees, their race, their gender, what categories they go in, that has not changed. And so you can begin working on that information to have it. It's one of those, you know, one of those things: rather to have it and not need it than need it and not have it.

Lisa Nagele-Piazza (15:09)
Right. That's the truth. And you know, and I think employers are collecting this information, hopefully, as new hires come on board and you know, as they're updating their HRIS systems. So I guess that's a good point is to make sure your systems are up-to date and ready to pull that information if needed.

Sheila Abron (15:27)
Yeah, absolutely. The other thing I'll note is if you know that your HRIS system is about to change, please go ahead and gather that information because remember, we are looking at a payroll period between October 1 of 2025 and December 31st of 2025. So if you know your HRIS system is going to change and you might have some issues getting that data, please go ahead and pull that and have that ready.

Lisa Nagele-Piazza (15:53)
Yeah, that's a great point 'cause it's a snapshot. It's not the whole year.

Sheila Abron (15:57)
Yeah, absolutely.

Lisa Nagele-Piazza (16:04)
The fifth and final thing for today, even if the federal government does roll this back, what should employers be looking at from a state law perspective?

Sheila Abron (16:14)
So states across the country, as I think you mentioned earlier, Lisa, when the federal government has an idea or they stop something and states have said, oh we think this is great, we think this is wonderful, they have enacted laws that may mirror them or may be in connection with them.

And so one of the things that we saw in particular is that after the EEOC expanded the EEO-1 reporting to have that pay data component, we saw California enact a very similar law through its California pay data, which now is also an annual reporting requirement. And while it is a California law, it does bring in a lot of employers because it applies if you have at least a hundred employees with just one in California, you're brought into that reporting requirement.

And we've seen other states that have paid data-type reporting or they'll take the EEO-1. So Massachusetts in particular is interesting because they have a pay data report, but they have said that you can submit your EEO-1 report in lieu of that. And so their law is going to be kind of dependent on what is submitted from an EEO-1 perspective. So that'll be interesting as we watch this. Illinois has a version of it.

Quick plug: Fisher Phillips has a pay data/pay equity map that you can look at on our website to see the different states that have different pay reporting and pay equity obligations there. And so another question that has been asked whether it's from federal contractors with the revocation of executive order 11246. And then this question around you know what happens if the federal government doesn't collect this information, should I still be collecting the information? And so at a bare minimum, if you are functioning in states where there are other reporting requirements, yes, you should still be collecting this information from your workforce.

Lisa Nagele-Piazza (18:22)
So let's get to know you a little better in five questions. Are you ready?

Sheila Abron (18:26)
I am. Let's go.

Lisa Nagele-Piazza (18:29)
First question, are you an early bird or a night owl?

Sheila Abron (18:32)
I'm a little column A, little column B. I will do both and function well in both of them.

Lisa Nagele-Piazza (18:35)
That’s unusual! I'm kind of envious of that. Second question remote hybrid or in office?

Sheila Abron (18:47)
I am primarily in office, but I travel a lot, so it feels like it's a hybrid situation, but I'm pretty much in the office.

Lisa Nagele-Piazza (18:55)
Really? That's also unusual. Most people I feel like are remote these days.

Sheila Abron (19:00)
Yep, I am from a southern state though, so we've been in office for a real long time.

Lisa Nagele-Piazza (19:07)
Third question. What's the latest show you binged?

Sheila Abron (19:11)
Okay, super late to this whole conversation, but just finished binging *Yellowstone* and it was fantastic. And now I'm now watching all of the tentacle shows that are coming off, like *Dutton Ranch* and *Marshall*. So. Yes, fully invested at this point.

Lisa Nagele-Piazza (19:25)
Fourth question, if you weren't a lawyer, what would you be?

Sheila Abron (19:32)
I would be managing a fast food restaurant, that second being a lawyer, was one of the favorite jobs that I have ever had in my life. So I would be doing that.

Lisa Nagele-Piazza (19:44)
Wow, you're full of surprises today, Sheila. And then finally, the fifth question, what's your favorite way to spend a free Saturday?

Sheila Abron (19:54)
I really would like to just be sitting about reading a book and enjoying an adult beverage.

Lisa Nagele-Piazza (20:01)
Yes, I can agree with that one.

Sheila Abron (20:04)
Yeah.

Lisa Nagele-Piazza (20:06)
Alright, well that's all the time we have for now. Thanks again for being on the show, Sheila.

Sheila Abron (20:10)

Thanks for having me. This has been a great conversation. I had so much fun.

Lisa Nagele-Piazza (20:14)
Absolutely, me too.
And thank you for listening to the FP 5. For other insights from Fisher Phillips, visit fisherphillips.com.

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