The Morning Risk Report: Changes Coming to EEOC Pay Rule

News
10.26.16

The article, "Changes Coming to EEOC Pay Rule," featured in *The Wall Street Journal*, discussed how employers with 100 or more employees will have to add pay data to other demographic information about their employees already provided to the U.S. Equal Employment Opportunity Commission (EEOC).

Cheryl Behymer weighed in on the new EEOC1 filing changes.

Changes to the EEO1 filing could be "very onerous" to businesses, said Cheryl. "The new EEO-1 report will result in approximately 3,660 data cells, which is a much longer form than the simple, one-page EEO-1 form that employers have filed for years," she said.

Presently, companies must provide the EEOC with the race, ethnicity and gender of their employees. The changes mean they also will have to place workers into one of 12 pay bands and 10 job categories, which the EEOC says is needed to help it track and investigate possible cases of pay discrimination. One of the first things to do–after deciding who in the company will lead the effort–is to figure out logistically how to collect the data, said Cheryl. Traditionally, most employers have a compensation or payroll system that is intentionally kept separate from the systems that capture demographics data in human resources databases. "Companies are now going to have to figure out a way to integrate those two…and will have to categorize it in the way the EEOC requested," she said. They need "to get all of the different data pieces together, figure out how to harmonize them and make sure they are accurate."

The EEOC will allow companies until March 31, 2018, to file the new information, granting an extension from the usual deadline of Dec. 31 to file because companies want to use the 2017 W-2 form information and don't want to file two separate reports, said Cheryl. Another potential concern she sees is how the new rule will interact with the federal Fair Labor Standards Act and similar state legislation to protect against pay discrimination. "We've seen an explosion in FLSA class-action lawsuits in recent years," said Cheryl. "I think…this is going to generate some additional litigation potentially by employees who feel they are not being fairly compensated" if they uncover any pay disparities when looking at the aggregate numbers released by the EEOC or sharing details on pay among themselves. Companies would be wise to devise a communications strategy to explain to employees why this data is being shared. "We're recommending employers conduct internal audits so they can identify in advance potential pay disparities and figure out ways to best address them so that it doesn't create employer-relations issues," she said.

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To read the full article, please visit *The Wall Street Journal* [subscription required].

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