



Equal Pay for Equal Work – Recent Proposals at the EEOC and in Pennsylvania

Insights

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The Lilly Ledbetter Fair Pay Act of 2009 (the “Act”) was signed into law on January 29, 2009. In short, the Act states that the 180-day statute of limitations for filing a lawsuit regarding pay discrimination resets with each new paycheck affected by that discriminatory action. Since the Act’s inception, there have been efforts made to address pay discrimination in the workplace. To that end, employers should be aware of the U.S. Equal Employment Opportunity Commission’s (“EEOC”) recent proposed changes to pay data reporting requirements.

By way of background, Section 709(c) of Title VII of the Civil Rights Act of 1964 requires employers to make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the EEOC prescribes by regulation or order. Pursuant to this statute, the EEOC issued a regulation requiring certain employers to file employer information reports, or EEO-1 reports, which call for reporting employee data by job category, ethnicity, race, and gender.

In an effort to compile better pay data, however, the EEOC has proposed changes to the information required on EEO-1 reports. The changes would require federal contractors and other employers with more than 100 workers to provide pay data on the EEO-1 reports, which the agency says will help uncover potential pay discrimination.

The revised data collection process has two components: (1) Component 1 collects the same data that is gathered by the currently approved EEO-1 report (data about an employee’s ethnicity, race, and sex, by job category); and (2) Component 2 collects data on employees’ W-2 earnings and hours worked, which EEO-1 filers should already maintain in the ordinary course of business. EEO-1 filers are required to submit only Component 1 data for the 2016 reporting cycle, and, starting in 2017, EEO-1 filers need to submit Components 1 and 2 data.

The proposed changes proffered by the EEOC were published in the Federal Register on February 1, 2016. The public comment period on the proposed changes will run until April 1, 2016.

Recently, perhaps following the EEOC’s lead, Pennsylvania legislators have also been proposing changes to Pennsylvania’s Equal Pay Law. While changes have not yet been made to Pennsylvania’s Equal Pay Law, there has been a strong push to do so. For example, in February of 2015, legislation

was proposed that sought to reinforce the conditions under which employers can pay different wages because of a “factor other than sex” (e.g., education, training, or experience), increase protection for those attempting to bring a case against their employer, and increase protection against retaliation when an employee files a complaint under Pennsylvania’s Equal Pay Law.

Pennsylvania employers should be aware of the new EEO-1 reporting requirements and also be cognizant of the potential changes to Pennsylvania’s Equal Pay Law.