



Employers May Soon Be Forced To Reveal Pay Information By Gender

BUSINESSES WITH 100 OR MORE WORKERS WOULD BE SUBJECT TO PROPOSED NEW LAW AIMED AT COMBATING GENDER DISCRIMINATION

Insights

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The federal government announced today its intent to gather additional pay information from larger employers, forcing all businesses with over 100 workers to provide detailed information about their pay practices in an effort to address gender discrimination. If the President's plan moves forward as expected, employers will be subject to a heightened pay transparency standard by the end of this calendar year.

This Alert answers the most commonly asked questions about this developing story.

What Has Been Proposed?

The Obama Administration has proposed executive action through the Equal Employment Opportunity Commission (EEOC) to require certain businesses to provide detailed information about how much each of their employees is earning. Affected employers must break down pay information by gender, as well as race and ethnicity, after the law goes into effect in order to make it very easy to identify pay gaps.

Who Will Be Impacted?

This executive action will apply to all businesses that employ 100 or more workers. According to the White House, the proposal would cover more than 63 million Americans.

How Will Employers Report The Information?

Currently all employers with 100 or more workers already complete the EEO-1 form on an annual basis, providing demographic information to the government about race, gender, and ethnicity. Once the new revisions take effect, the EEO-1 form will also require that salary and pay information be included.

Why Has The Government Proposed This Change?

The federal government has specifically stated that the goal of this additional data-gathering is to identify businesses that might have pay gaps, and then target those employers who are discriminating on account of gender. It is no coincidence that this plan was announced on the

seventh anniversary of the Lily Ledbetter Fair Pay Act, a federal law that overturned a Supreme Court decision and made it easier for employees to bring equal pay claims.

In other words, once this new law takes hold, the EEOC will have greater ease in identifying disparities and areas of potential pay discrimination to determine where it will take enforcement action.

When Will Employers Be Subject To The New Law?

If the proposal proceeds as scheduled, the draft revisions would be available for inspection and public comment between February 1, 2016 and April 1, 2016. The EEOC Chair has stated that she anticipates the rulemaking process to be completed by September 2016, when the new rules would officially go into effect. If this holds true, employers will have to submit their pay data for the first time in September 2017.

What Should Employers Do Now?

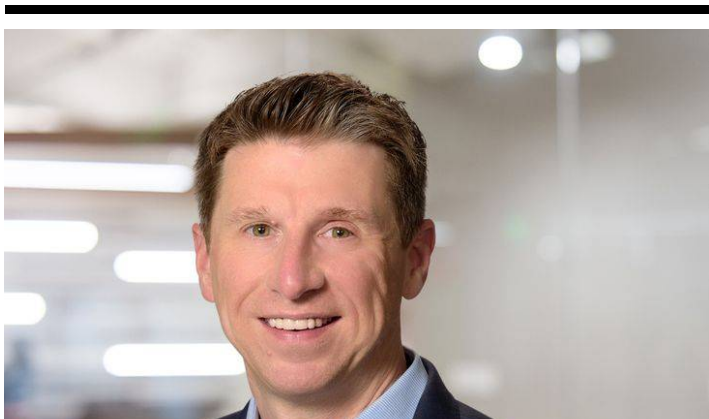
In light of these developments, affected companies should make it a priority to review current pay systems and identify and address any areas of pay disparity. It is critical to take steps now to minimize increased scrutiny once the data begins to be reported next year.

By conducting your own gender-specific audit of pay practices, you will be able to determine whether any pay gaps exist that might catch the eye of the federal government when you turn over this information next year. You will have time to determine whether any disparities that may exist can be justified by legitimate and non-discriminatory explanations, or whether you will need to take corrective action to address troublesome pay gaps.

If you have any questions about this proposal, or how it may affect your business, please contact your Fisher Phillips attorney.

This Legal Alert provides an overview of a proposed new federal regulation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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