EEOC To Revise Controversial Proposed Pay Data Collection Rules

AGENCY RESPONDS TO CRITICISMS LODGED BY FISHER PHILLIPS, OTHERS

Insights
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In a positive development for employers, the U.S. Equal Employment Opportunity Commission (EEOC) recently announced that it would revisit its controversial proposed pay data collection rules, essentially acknowledging that its initial proposal would have been unduly burdensome for businesses.

Fisher Phillips was one of the most vocal critics of the proposed rules, submitting public comments and pointing out the undue burden to be faced by employers, as well as the questionable utility of the data collection and the serious privacy concerns that accompany the gathering and production of this information. The firm is pleased that the agency appears to be prepared to address these concerns.

Fisher Phillips Identifies Concerns Regarding Proposal
By way of background, the EEOC released proposed regulations in January 2016 that would require any business with 100 or more workers to provide detailed information about their pay practices to the federal government through the annual EEO-1 Report (read more here). The goal of the proposed regulations was to better track pay disparities between genders so as to increase enforcement of equal pay standards.

While the goal is laudable, the firm was concerned that the proposed regulations, as initially written, would not accomplish anything noteworthy but would only add to employers' administrative burden. Therefore, on April 1, 2016, the firm submitted public comments to the EEOC, seeking a withdrawal of the proposed rules and a wholescale revision by the agency (read more here).

The firm's comments described how the proposed regulations would set employers up for unwarranted disparate impact claims of discrimination founded on inaccurate theories using data not sufficiently valid to withstand scrutiny. More importantly, the firm's comments explained in detail how the time and expense to prove otherwise would be considerable for the nation's employers, as would the burden to simply comply with the data gathering efforts.

Add to that the legitimate and well-founded privacy concerns that spring from these proposals, and the comments predicted a recipe for disaster. For these reasons, the comments submitted by Fisher

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Phillips respectfully urged the EEOC to take meaningful action steps to address the concerns raised.

EEOC Will Soon Issue Revised Proposal

On June 22, 2016, EEOC Chair Jenny Yang announced that the agency would soon issue a revised version of its proposed pay data collection rules in an effort to "think about how we minimize the burden on employers." The revised rules will be released in the next several months, and employers will once again have the opportunity to offer comments.

The firm's April 1 comments offered suggested alternative methods for collecting and analyzing the requested data in order to better achieve the agency's stated goals, while at the same time alleviating some of the anticipated burden. Our hope is that the agency took these comments to heart and will incorporate some of our suggestions into the updated proposal. However, in the event that the agency's revised proposal falls short of this goal, the firm stands ready to once again provide substantive comment in an effort to serve as a voice to the business community.

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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