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Meridian Client Update

EEOC Proposes to Significantly Expand Employer Requirements to Report Pay Data

With little fanfare, the Equal Employment Opportunity Commission (EEOC) earlier this month issued a revised proposal to impose significant compliance burdens on private sector employers to collect and submit extensive employee pay data. According to the EEOC, the pay data will assist it and other Federal agencies in identifying possible pay discrimination and assist employers in promoting equal pay in their workplaces.

Currently, private sector employers with 100 or more employees and federal contractors with 50 or more employees are required each year to submit to the EEOC the following data on form EEO-1: the number of individuals employed by job category and by race, ethnicity, and gender. The data include seven race and ethnicity categories and ten job categories, by sex.

The EEOC proposal would significantly expand the data submitted on form EEO-1 to include the following:

- **Pay data.** The number of individuals employed by job category and by race, ethnicity, and gender across the following 12 pay bands (based on W-2 income):

Band	Pay Range
1	\$19,239 and under
2	\$19,240 - \$24,439
3	\$24,440 - \$30,679
4	\$30,680 - \$38,999
5	\$39,000 - \$49,919
6	\$49,920 - \$62,919
7	\$62,920 - \$80,079
8	\$80,080 - \$101,919
9	\$101,920 - \$128,959
10	\$128,960 - \$163,799
11	\$163,800 - \$207,999
12	\$208,000 and over

The number of job categories and race and ethnicity categories would remain unchanged from the current report requirement.

- **Hours worked.** An employer would also be required to report the total number of hours worked by the employees counted in each pay band for the reporting year, by their ethnicity, race, and gender, according to the following requirements:
 - For non-exempt employees under the Fair Labor Standards Act (FLSA), the EEOC proposal would require data on hours worked, which employers already report for FLSA purposes.
 - For exempt employees, the EEOC proposal would provide employers with the option to either (a) report actual hours worked by exempt employees if the employer already maintains accurate records of this information; or (b) report a proxy of 40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees multiplied by the number of weeks the individuals are employed during the EEO-1 reporting year.

The EEOC proposes that the 2017 EEO-1 report would be the first one to include the expanded data disclosures. Covered employers would be required to submit the 2017 EEO-1 report by March 31, 2018.

EEOC holds EEO-1 data confidential, as required by law, and will not publish individual EEO-1 reports. EEOC only publishes aggregate EEO-1 data in a manner that does not reveal any particular employer's or employee's information.

Comments on the proposed revisions to form EEO-1 should be submitted to the U.S. Office of Management and Budget (OMB) no later than August 15, 2016.

Meridian Comment. The EEOC's proposal to expand the EEO-1 report to include pay data presents a significant burden on employers and may be precursor to SEC rulemaking to require proxy disclosure on broad-based employee pay. However, such a disclosure requirement would likely require enabling legislation, which is highly unlikely at this time. Whoever should occupy the White House next year will likely face increasing pressure to enact disclosure rules to highlight perceived pay disparities within public companies.

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The **Client Update** is prepared by Meridian Compensation Partners' Technical Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-235-3605 or dkalfen@meridiancp.com.

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