

## **NEW EEOC PAY REPORT PROPOSED FOR EMPLOYERS IN 2017 – A LARGE COMPLIANCE AND REPORTING TASK AHEAD FOR EMPLOYERS**

The EEOC announced on Friday, January 29, 2016, its intention to submit to the Office of Management and Budget (OMB) a major revision to the Employer Information Report (EEO-1) which will require that all employers with more than 100 employees submit compensation data to the EEOC beginning in 2017. The new EEO-1 form will take the place of the Department of Labor's Office of Federal Contract Compliance Programs' (OFCCP) pending "Equal Pay Report" regulations, which would have affected only federal contractors and subcontractors.

### **What Pay Data Would Be Required?**

Currently, employers with more than 100 employees, and federal contractors or subcontractors with more than 50 employees are required to collect and provide to the EEOC information about employees' race/ethnicity and sex in each of ten job categories (e.g., Executive & Senior-Level Officials and Managers, First/Mid-Level Officials and Managers, Professionals, Technicians, Sales Workers, Administrative Support Workers, Craft Workers, Operatives, Laborers and Helpers, and Service Workers).

The new rule, which will be effective beginning in September 2017, will require employers with more than 100 employees to also report on the W-2 earnings and hours worked for all employees by race/ethnicity and gender. Federal contractors and subcontractors with between 50 and 99 employees will only be required to submit the current EEO-1 form without compensation data. For each of the ten EEO-1 job categories, the proposed EEO-1 report will require compensation data to be categorized in twelve pay bands. The pay bands track those used by the Bureau of Labor Statistics in the Occupation Employment Statistics Survey, with increments for below \$19,239 (Pay Band 1) and increasing by various increments for each subsequent Pay Band, to Pay Band 12 (salaries greater than \$208,000). For example, an employer would report that it employs 15 White women in the professional job category who are in the seventh pay band and 12 African-American men who are Craft workers in the second pay band.

Unlike the OFCCP's proposal, which required year-end W-2 compensation data, the EEOC's proposal will require W-2 earnings for the previous twelve months from any pay period between July 1st and September 30th (same as the current EEO-1 report). As the proposal requests W-2 information, this will include salary, bonuses, commissions, tips, taxable fringe benefits, and other forms of reportable earnings. The EEOC's proposal requires that part-time or partial year employment be normalized by also requiring employers to publish hours worked by the employees in each job category and pay band.

It is unclear to me how this will be useful in assessing pay equity, as items such as eligibility for overtime, commissions, bonuses are typically not the same for full-time or part-time employees.

### **Issues for Employers**

The EEOC says it will use the pay information to uncover potential pay discrimination, as it will compare variations within and across job categories. It is not clear how these pay bands or other information will then reflect differences in pay as a result of areas that are currently acceptable (legally and practically) for items such as seniority, level of responsibility, and education. The EEO-1 information is reported by the parent company and all subsidiaries, which will then permit the EEOC to compare compensation within a location, across the organization and enterprise-wide. In addition, the EEOC said it will use the data to compare employers by industry or metropolitan area.

There are a variety of issues and other complications that will certainly generate a multitude of comments and objections (written comments to the EEOC's proposal will be due 60 days after it is published in the Federal Register, an action that is expected to occur on Monday, February 1, 2016, putting the close of the comment period in early April 2016).

Even though there may be modifications to these rules, it is clear that the combination of these new rules with the OFCCP's focus on fair pay and recent state action on pay equity will require employers to act proactively. Specifically, they should strongly consider conducting a pay-equity analysis now to address areas of concern before data is reported to governmental agencies, such as the EEOC and OFCCP.

Working with legal counsel, our compensation consulting group is well equipped to assist employers with this process.

### **About Cowden Associates, Inc.**

Cowden Associates, Inc. is a Pittsburgh-based consulting and actuarial firm. We have a dedicated team of professionals with extensive experience in benefits, retirement programs, compensation, employee communications, actuarial and technology services. Using a total compensation based approach, Cowden Associates, Inc. provides a full range of consulting services helping clients establish and maintain high quality compensation and benefit programs aligning organizations' business strategies and objectives. Cowden Associates, Inc. is a charter partner of United Benefit Advisors (UBA), the nation's leading independent employee benefits advisory organization.

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