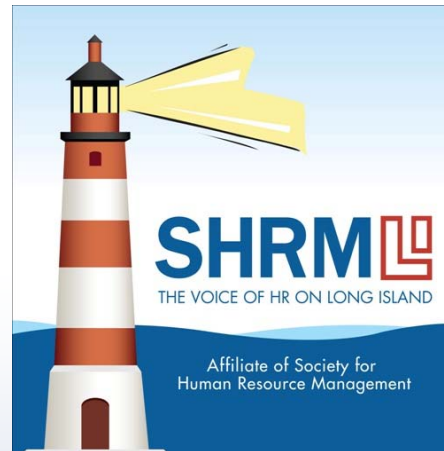




jackson | lewis

all we do is work



Chris Valentino

631-247-4653

valentic@jacksonlewis.com

Eric J. Felsberg

631-247-4640

felsbere@jacksonlewis.com

February 26, 2016

**Last Fridays “Lunch and Learn” Webinar:
The EEOC’s Pay Data Collection**

Lawyer's Disclaimer

- Jackson Lewis P.C. has prepared the materials contained in this presentation for the participants' reference and general information in connection with education seminars presented by the firm and its attorneys. Attendees should consult with counsel before taking any actions that could affect their legal rights and should not consider these materials or discussions about these materials to be legal or other advice regarding any specific matter.

EEOC Proposal to Collect Pay Data From Employers

EEOC Proposal to Collect Pay Data From Employers

- On February 1, EEOC proposed adding employee W-2 earnings and work hours for all employees to annual EEO-1 reporting
 - Would start with 2017 EEO-1 submission
- EEOC and OFCCP will use for enforcement and investigations
- Applies to employers with 100 or more employees
- Comments deadline: April 1
 - Comments will be submitted by employer and industry groups
 - Public hearing

Proposed EEO-1 Reporting: What Do We Have to Report

New EEO-1 reports will require:

- W-2 Earnings

- For each of the 10 EEO-1 categories, the total number of employees by race/ethnicity and gender that fall in each of the 12 pay ranges established by the EEOC (1,680 options)
- Based on W-2 earnings for a *non-calendar* 12-month period

- Hours Worked

- Total number of hours worked by the employees separately in each pay band for race/ethnicity and gender

What Will EEOC and OFCCP Do with this Data?

- EEOC and OFCCP will:
 - Use pay data to assess complaints of discrimination
 - Focus agency investigations
 - Identify existing *pay* disparities that may warrant further examination (focused investigations)
- EEOC plans to ***publish*** employers' aggregated data by industry and geography – “will help employers in conducting their own analysis of their pay practices to facilitate voluntary compliance.”

Confidentiality Concerns

EEOC publishing confidential pay data by industry and geographic area may:

- Identify pay data by employer
 - Only employer in industry in geographic area
 - One of few employers in industry in geographic area: competitive advantage
- Identify pay data by employee
 - Only employee in EEO-1 category at all
 - Only employee by race/ethnicity and gender in EEO-1 category

EEOC Vastly Underestimates Burden

- EEOC assumes employers will write software programs to merge data from HRIS and Payroll systems
 - Race/ethnicity, gender, and EEO-1 category data in HRIS
 - W-2 earnings and hours worked in payroll systems
- Same burden **6 hours, \$160 per year** for ALL employers regardless of:
 - Number of employees, locations and reports to be filed

L&L Homework

- Determine Whether Your Organization is Required to Report
- Consider Submitting Comments
- Conduct a Proactive EEO Pay Self-Analysis to Assess Risk
- Ensure Self-Analysis is Conducted under Attorney-Client Privilege
- Speak with IT Function and Outside HRIS and Payroll System Vendors

All we do is
work

Workplace law. In five time zones and major locations coast to coast.

jackson|lewis

Preventive Strategies and
Positive Solutions for the Workplace®

jackson|lewis