

November 18, 2005

EEO-1 Report Gets a Face Lift EEOC Finally Approves Revisions Proposed in 2003

On November 16th, more than two years after proposing revisions to one of its key employer reporting forms, the Employer Information Report (EEO-1), the Equal Employment Opportunity Commission (EEOC) voted 3-1 to approve proposed revisions to the form. The revisions will expand the number of race and ethnic categories, and revamp some of the report's job categories. The revisions are scheduled to go into effect starting with the 2007 reporting cycle. However, the public will have 30 days to submit comments on the proposed revisions prior to the Office of Management and Budget's (OMB) review. The 30-day period will commence after notice of the revisions has been published in the Federal Register.

Until now, the format of the EEO-1 report, which was adopted by the EEOC and the Office of Federal Contract Compliance Programs (OFCCP) in 1966 to collect annual data from covered private employers (100 or more employees) and federal contractors (50 or more employees) about their minority and female workforce, has remained substantially the same. The approved revisions mark the first significant changes made to the EEO-1 report in nearly 40 years. The revisions that were approved are not identical to those first proposed by the EEOC in June 2003. The final revisions have taken into account some of the concerns employers raised during the initial comment period.

Ethnic and Racial Categories

The EEOC has made several revisions to the EEO-1 report's ethnic and racial categories. The most controversial change is the addition of a "Two or more races (Not Hispanic or Latino)" category. Despite objections raised by employers that the inclusion of such a category would be burdensome and yield misleading or inaccurate data, the EEOC was not dissuaded. The EEOC's decision to add the new category was two-fold; the data generated by this category will 1) aid the EEOC in analyzing national employment trends; and 2) allow

the OFCCP to "count this new category as 'minority' and to continue using the current methodology with minor adjustments."

The EEOC has also maintained its position with respect to not seeking racial data from Hispanic or Latino employees. The EEOC's rationale for not requesting this data is based on 2000 U.S. Census data, which found that only a small percentage of the population identified themselves as both Hispanic and a racial minority group.

Additional revisions made to the ethnic and racial categories include: 1) "Asian (Not Hispanic or Latino)" is now listed as its own category, having been separated from "Pacific Islander"; 2) "Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)" is listed as a new category; 3) "Black" has been renamed "Black or African American (Not Hispanic or Latino)"; and 4) "Hispanic" has been renamed "Hispanic or Latino."

Finally, the revisions to the EEO-1 report state that self-identification is now the preferred method of gathering ethnic and racial information. The EEOC states that "[s]elf-identification is key to the government's goal of understanding the increasing complexity of race in America." At the same time, employers are required to notify employees that providing ethnic or racial information is strictly voluntary. However, in the event an employee declines to self identify, employers may utilize employment records or visual observation to gather this information.

The EEOC has indicated that it will not require that employers resurvey their entire workforce prior to the date the revised EEO-1 report goes into effect. That said, the EEOC expects employers to take advantage of those "opportunities to further resurvey . . . as much and as soon as possible, for example, using routine updates of employees' personal information to obtain updated EEO-1 data. Employers also should seek self-identification of new employees under the new ethnic and racial categories *as soon as possible.*" (Emphasis added.)

Job Categories

The EEOC has approved two revisions to its EEO categories. The first revision takes the current “Officials and Managers” category and divides it into two new categories: 1) “Executive/Senior Level Officials and Managers,” and 2) “First/Mid-Level Officials and Managers.” The EEOC, in response to employer concerns, dropped its initial proposal to create three distinct hierarchical sub-categories of “Officials and Managers.” The EEOC’s rationale for devising the new categories is that the former single category of Officials and Managers “risks obscuring important trends in the employment of women and minorities.” To wit, with the new categories, the EEOC and the OFCCP will have data to assist them in determining whether glass ceiling issues exist for women and minorities and whether such glass ceilings are disappearing or becoming more substantial from year to year. To assist employers with the new job categories, the EEOC has included detailed descriptions of the two tiers of officials and managers in the EEO-1 Instruction Booklet.

The other revision pertains to non-managerial officials with expertise in business or financial occupations. Currently, such employees are listed under the “Officials and Managers” category. In the revised EEO-1 report, these employees will be reclassified as “Professionals.” Their reclassification was necessary, according to the EEOC, because their inclusion under the “Officials and Managers” category made the data on management officials “less useful . . . in analyzing trends in mobility of minorities and women within the upper reaches of organizations.”

Hawaiian Employers Must Now Report Race and Ethnicity Data

Currently, covered employers in Hawaii are only required to report gender data. The revised EEO-1 Report will require employers in Hawaii to begin reporting race, ethnicity and gender data.

Practical Steps to Comply

While these revisions have not yet been approved by the OMB, it is quite likely that they will be. Accordingly, employers should now begin to plan for these changes by addressing the following:

HRIS. Communicate with your organization’s human resources information systems (HRIS) management and any external organizations who assist with applicant and/or employee tracking about implementing the new categories for race/ethnicity tracking and EEO-1 categories in your employee databases and or applicant tracking. Develop a timeline for changes to be implemented.

Self-identification questionnaire. Develop a plan of action regarding how and when employees will be asked to provide voluntary self-identification of their

race and ethnicity according to the newly revised race/ethnicity categories. You also may wish to solicit gender identification in this self-identification process. In the questionnaire or survey, include a separate response option for gender and race/ethnicity that allows the respondent to indicate that s/he declines to self-identify. The EEOC suggests the following language:

“The employer is subject to certain governmental recordkeeping and reporting requirements for the administration of civil rights laws and regulations. In order to comply with these laws, the employer invites employees to voluntarily self-identify their race and ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information will be kept confidential and will only be used in accordance with the provisions of applicable laws, executive orders, and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual.”

Supplementary identification system. For those employees who decline to self-identify, develop a process to identify race/ethnicity and gender visually or from employment records. Importantly, the EEOC states that visual identification may *only* be used when an employee declines to self-identify. Every employee must be identified by some method.

Code the method of race/ethnicity/gender identification in your organization’s employee database. Ideally, your employee database will contain a field indicating if the race/ethnicity and gender was determined through one of three possible methods: self-identification, visual identification or employment records.

Re-categorization of O&Ms. Re-code every employee currently included in the Officials and Managers EEO-1 category into the new higher or lower level Officials and Managers categories or the Professionals category.

Self-audit. As soon as the new categories for Officials and Managers are implemented, complete a mock EEO-1 report to evaluate any glass ceiling indicators that may exist between the higher and lower level categories. Continue this review each year to spot year-to-year trends and measure the success and/or challenges to progress with glass ceiling issues. If you are a Federal contractor, know that the OFCCP will be using your EEO-1 data to conduct the same types of analyses on your organization.

If your organization is a Federal contractor, ensure that those who are identified as being of “Two or more races (Not Hispanic or Latino),” will be included in affirmative action program (AAP) statistics for “Total Minorities.”

For more information about the implications of the new EEO-1 reporting or any employment or affirmative action related matter, please contact Valerie Hoffman at vhoffman@seyfarth.com, Bob Nobile at rnobile@seyfarth.com, Bill Perkins at wperkins@seyfarth.com or any attorney on our website at www.seyfarth.com.

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