



SUBMITTED ELECTRONICALLY

March 31, 2016

Ms. Bernadette Wilson
Acting Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
131 M Street NE.
Washington, DC

RE: Docket ID No. EEOC-2016-0002-0001, Proposed Revision of the Employer Information Report (EEO-1)

Dear Ms. Wilson:

The U. S. Poultry & Egg Association, the National Chicken Council and the National Turkey Federation are non-profit trade associations representing the producers and processors of chickens, turkeys, other poultry, eggs and affiliated industry suppliers. Our associations appreciate the opportunity to submit these comments on the proposed rule issued by the Equal Employment Opportunity Commission (EEOC) and published in the Federal Register on February 1, 2016. This proposed rule seeks to revise the reporting requirements by requiring employers to collect, retain and submit with their Employer Information Report (EEO-1 Report) additional summary data on employee compensation broken down by sex, race, ethnicity, specified job categories, and other relevant data points such as hours worked and number of employees, in a newly revised EEO-1 Report.

Our associations oppose the proposed regulation as drafted and respectfully request that EEOC decline to adopt the proposed rule. The revised EEO-1 Report would not achieve the stated goals of the proposed rule as it would not enhance or improve the employer's nor the EEOC's ability to identify and target compensation discrimination amongst employers. Likewise, compiling and disseminating such compensation data would not lead to greater voluntary compliance nor deter non-compliance.

The proposed EEO-1 form seeks to collect pay data according to broad job categories, such as "executive/senior level officials and managers" or "laborers and helpers." These broad job categories will include a list of jobs that are not equal or substantially similar for purposes of a valid comparison. In the case of poultry producers for example, Job Group 8: Laborers and Helpers include all types of positions from live hang, to evisceration, to debone, to specialty cutters, to leaders, to shipping and dock workers, to inspectors, to forklift operators, etc. The factors that go into setting and determining wages are as varied as the positions that are grouped

together under this category. The generic aggregate compensation data sought under the rule will also not accurately reflect various factors that affect pay rates. These would include possible number of work hours in shifts, overtime, production or performance bonuses, vacation/holiday pay, seniority pay and other variations in pay that can change yearly or even quarterly. The aggregate compensation data simply cannot and does not take this information into account and thus would be of little use to EEOC or employers.

In the majority of situations where a wage disparity exists between two jobs within the same job category, there are valid and lawful justifications for the disparity. These may include (1) different educational or training backgrounds amongst employees; (2) different career experience; (3) varying levels of seniority or longevity with the employer; (4) an objective, merit-based system of the employer; (5) a compensation system that measures earning by quantity or quality of production; (6) geographical differences that impact the cost of living and job market; (7) shift differentials; or (8) any other bona fide factor the employer identifies other than gender. Aggregate data as proposed in the new EEO-1 form that simply shows a wage disparity, fails to take these valid, non-discriminatory reasons into consideration and will create a false impression of wage discrimination where none exists.

An employee's own decisions and actions can also create a wage disparity, which has nothing to do with discriminatory intent by the employer. An employee who requests to work part-time, reduced hours, or only on specific shifts that pay a lesser rate than others will impact the wages he or she earns.

Moreover, if the employee is a "Sales Worker" or performing another job where the employee receives commissions or bonuses based upon his or her performance, this will create a wage disparity. Even though all employees in the equal or substantially similar position are working under the same commission or bonus plan, the employee's own actions and performance will dictate what the employee actually earns.

Finally, the wage disparity can also be created by an employee's personal choices as to pre-tax payroll deductions. One employee may max out all pre-tax deductions for a 401(k), dependent child reimbursement, medical expense reimbursement, college savings, etc., while another employee may not request any such deductions. These decisions will impact the employee's W-2 wages, which is the data employers are required to record on the EEO-1 form. However, none of these employee choices and actions will be captured or reflected on the EEO-1 form to justify a potential wage disparity. Again, this omission on the report will create the false impression of wage discrimination, where none exists.

Although the proposal indicates that the Commission does not want to impose any additional recording burdens on companies, companies may have no choice but to begin to seriously review actual hours worked for many salaried employees. Although many companies default full-time salaried workers to 40 hours per week for Affordable Care Act reporting purposes, not all salaried workers work the same number of hours. It can be reasonably expected that some salaried employees within the same job categories are compensated at different rates if their job responsibilities require longer hours.

Further, the proposed rule would impose new and burdensome requirements on employers to compile, organize and submit extensive compensation data which we believe will fail to meet the stated objectives set forth under the proposed rule. To the contrary, the implementation of the proposed rule would hinder employers from conducting a more thorough and useful evaluation of their personnel data and would divert scarce EEOC resources from more vigorously enforcing equal employment laws in a more effective manner.

Employers will have to develop new customized reports that will allow them to connect various compensation records pulled from multiple sources. EEO-1 data normally comes from Human Resources Information Systems while W-2 earnings come from payroll systems. The employer will need to develop new software to merge these two systems to create one report or will need to manually separate and organize the data for each covered location and sort the information by each EEO-1 category. Either option will necessarily require employers to routinely cross-check W-2 payroll data with EEO-1 personnel data to resolve any discrepancies between the two lists. This will be a time consuming and expensive process and the compilation of such aggregate summary data on an individual employer and industry basis would not assist in identifying discrimination or encourage voluntary compliance. While EEOC estimates 5.6 hours will be required to collect, verify, validate and report the data annually, one member company has estimated that at least 80 hours of work will be needed annually to produce and review the report in addition to the costs of software development and upgrades. Further EEOC estimates that only one-half hour will be needed to familiarize a management professional with the new requirements. We believe this greatly underestimates the time required and suggest that a minimum of 8 hours per professional is a more likely estimate. We believe the EEOC estimates understate the time requirements by at least a factor of ten.

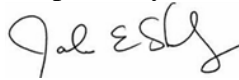
Likewise, other than stating EEOC's general practice not to release employer data that it determines is confidential, the proposed rule provides no specific steps it will take to ensure the protection of such data. This has become a serious issue where recent data breaches, hackers and rouge government employees have shown how easy it is to take and disseminate sensitive and confidential information maintained by government agencies and employers. As acknowledged, such pay data is highly sensitive and the release of it to unauthorized parties could cause significant commercial harm to employers. Thus, before any rule on the collection of such wage data is imposed, careful consideration must be made as to ensuring the data is adequately protected.

As part of its support for the revised EEO-1 Report, EEOC seeks to "enhance the quality, utility and clarity of the information to be collected" and "to enable employers to self-assess their pay practices and policies and therefore support voluntary compliance". However, comparing pay practices among industries is of little use where many factors go into compensation such as education, prior relevant experience, performance, seniority, skill set, scope of responsibility, geographic location, etc. In addition, the jobs grouped together under EEO-1 categories are so vastly different that simply comparing aggregate data will be of little value to employers, industries or EEOC. EEOC should also be aware that simply comparing aggregate compensation information may give employers a false sense of security. For example, employers can become complacent if other similar industries are under representing females in certain job categories and thus the employer believes that it is acceptable to continue that underrepresentation. In the

same way, an employer may become complacent if discrepancies in pay exist in the job groups of similar industries and thus does not take affirmative steps to address the discrepancies.

Considering these reasons and the comments submitted by other interested parties, EEOC should not adopt the proposed rule. The revised EEO-1 Report will not aid the agency in detecting and targeting systemic discrimination but instead will divert scarce EEOC resources that could be better served utilizing existing enforcement mechanisms. The compensation data sought to be collected is of little value where it seeks aggregated data when compared to the extensive burden and cost that will be placed on employers to compile and submit the data and for EEOC to process and utilize the data. Moreover, there is no evidence that the compilation and dissemination of such data would lead to greater voluntary compliance or deter non-compliance.

Respectfully submitted,



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