



Electronic Dispatch

Labor and Employment Law Information Memo

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REMINDER: EMPLOYERS WHO HAVE EEO-1 REPORTING OBLIGATIONS MUST USE NEW EEO-1 REPORT FOR 2007

The Equal Employment Opportunity Commission ("EEOC"), after consulting with the Office of Federal Contract Compliance Programs ("OFCCP") and after reviewing and considering the public comments it received, issued its final revisions to the Employer Information Report ("EEO-1 Report") in early 2006. However, the EEOC did not make the revised EEO-1 Report effective until 2007. This information memo is intended to remind employers who have a reporting obligation that they must use the revised EEO-1 Report beginning with the September 30, 2007 filing deadline. This information memo also provides some background regarding the requirements for filing the EEO-1 Report and reviews the changes that have been made to the EEO-1 Report.

Background

The EEO-1 Report was adopted by the EEOC and OFCCP in 1966 to collect data from certain large private employers and Federal contractors regarding their minority and female workforce. The OFCCP generally uses information in the EEO-1 Reports to determine which employers to select for compliance evaluations. The EEOC uses information in the EEO-1 Reports to enforce Title VII of the Civil Rights Act of 1964 ("Title VII"), and to analyze trends in female and minority employment in various regions, industries, and sectors of the economy.

The EEO-1 Report must be filed by: (1) all private employers who have Federal government contracts in the amount of \$50,000 or more and 50 or more employees; and (2) all private employers who do not have Federal government contracts, but have 100 or more employees. State and local governments, primary and secondary school systems, institutions of higher education, Native American tribes, and tax-exempt private membership clubs other than labor organizations are excluded from this reporting obligation.

Employers who have EEO-1 reporting obligations must file the EEO-1 Report with the EEOC by September 30 of each year, using employment numbers from any pay period from July through September of the year of filing. Although the EEOC does not require employers to re-survey their entire workforce prior to filing their 2007 EEO-1 Report, employers would be well advised to do so between July and September of 2007 to ensure that the information provided is accurate. Employers will be required to re-survey their entire workforce prior to filing their 2008 EEO-1 Report.

Revisions to the EEO-1 Report

Changes to the Racial/Ethnic Categories

The EEOC has made a number of changes to the racial and ethnic categories set forth on the EEO-1 Report. The old EEO-1 Report included five broad racial and ethnic categories: (1) Hispanic; (2) White (Not of Hispanic Origin); (3) Black (Not of Hispanic Origin); (4) Asian or Pacific Islander; and (5) American Indian or Alaskan Native. The revised EEO-1 Report changes the "Hispanic" category to "Hispanic or Latino." The "Hispanic or Latino" category is defined as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

For those employees who are not Hispanic or Latino, there are now six separate racial and ethnic categories: (1) White; (2) Black or African-American; (3) Native Hawaiian or Other Pacific Islander; (4) Asian; (5) American Indian or Alaska Native; and (6) Two or more races. Thus, the former category of "Asian or Pacific Islander" has been split into two separate categories: "Asian" and "Native Hawaiian or Other Pacific Islander." The "Asian" category is defined as a person having origins in any of the original

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peoples of the Far East, Southeast Asia, or the Indian subcontinent (including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam). The “Native Hawaiian” category is defined as a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

The EEOC added the new category of “Two or more races” without requiring employers to report the combination of races applicable to particular employees. The category “Two or more races” is simply defined as all persons who identify with more than one of the following races: (1) White; (2) Black or African-American; (3) Native Hawaiian or Other Pacific Islander; (4) Asian; or (5) American Indian or Alaska Native. Accordingly, an employee who has both White and African-American origins, and an employee who has both Asian and African-American origins, should be counted together in the same category of “Two or more races.”

In its instructions for completing the revised EEO-1 Report, the EEOC strongly encourages employers to use voluntary self-identification to gather the data necessary for the EEO-1 Report. The EEOC suggests that employers offer employees the opportunity to self-identify, and provide employees with the following written assurances: (1) self-identification is purely voluntary, and refusal to provide racial and ethnic information will not result in any adverse employment action; (2) the self-identification information is confidential and will be used only for purposes of satisfying the employer’s reporting obligation; and (3) the EEO-1 Report will only contain numbers of employees in each category and will not include personal identification of any employee. Employers should use employment records or visual observation to gather racial and ethnic data for EEO-1 Reports only when an employee declines to self-identify.

Changes to the Job Categories

The EEOC has also made some changes to the job categories set forth on the EEO-1 Report. The old EEO-1 Report included nine job categories: (1) Officials and Managers; (2) Professionals; (3) Technicians; (4) Sales Workers; (5) Office and Clerical; (6) Craft Workers (Skilled); (7) Operatives (Semi-skilled); (8) Laborers (Unskilled); and (9) Service Workers. The revised EEO-1 Report divides the “Officials and Managers” category into two separate categories: “Executive/Senior Level Officials and Managers” and “First/Mid Level Officials and Managers.” The “Executive/Senior Level Officials and Managers” category is defined as an individual who plans, directs, and formulates policies, sets strategy, and provides the overall direction of the enterprise or organization. The “First/Mid Level Officials and Managers” category is defined as an individual who serves as a manager at a group, regional, or divisional level of the organization, and who receives directions from Executive/Senior Level management.

The EEOC has also changed the name of the “Office and Clerical” category to “Administrative Support Workers.” In addition, the EEOC has changed the name of the “Laborers” category to “Laborers and Helpers.” The types of positions that would fall within each of these categories has not changed in any significant manner.

If you have any questions regarding whether you are required to file the EEO-1 Report, or need any assistance with filing the EEO-1 Report, please contact:

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