

Department of Labor Issues Proposed Rule Requiring Contractors to Submit Pay Data (79 Fed. Reg. 46562)

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On August 8, 2014, the **Department of Labor (“DOL”)** issued a [proposed rule](#) that would require certain federal contractors and subcontractors to supplement their Employer Information Report (“EEO-1 Report”) submitted to the **Office of Federal Contract Compliance Programs (“OFCCP”)** with summary information on compensation paid to employees by sex, race, ethnicity, and job category, and to provide other relevant data, such as the hours worked by those employees. The proposed rule was issued at the direction of the President, who issued an April 8 [memorandum](#) instructing the Secretary of Labor to propose a rule within 120 days to collect such summary compensation data from federal contractors and subcontractors. We discussed the President’s April 8 in our e-alert of April 24.

The proposed rule would require employers with more than 100 employees that hold federal contracts, subcontracts, or purchase orders amounting to \$50,000 or more that cover a period of at least 30 days, including modifications, to report the compensation data described above. In addition to prime contractors or first tier subcontracts, this rule would also typically include private employers that serve as a depository of federal government funds in any amount, or financial institutions that serve as issuing and paying agents for U.S. Savings Bonds and Notes.

According to the DOL, the compensation information required under the proposed reporting requirement is already available to employers in employees’ Form W-2 Wage and Tax Statement. Employers would be required to report data for an entire year (January 1 through December 31) with reports due by March 31 of each year (which differs from the September 30 filing deadline for the EEO-1 Report). The DOL is seeking comments on any additional costs that may be incurred as a result of these dates not aligning.

The DOL states in the proposed rule that it intends to use the collected data, along with existing standards such as labor market survey data, to create objective industry standards against which it will compare employers to determine which contractors it will prioritize and schedule for compliance evaluations. The proposed rule states that this data collection effort “is a critical tool for eradicating

compensation discrimination . . . [and] would enable OFCCP to direct its enforcement resources towards entities for which reported data suggest potential pay violations . . .” The DOL also hopes that the objective industry standards will lead employers to assess their own compliance with the standard and undertake voluntary measures to change their employment policies and practices, noting that “contractors will rightfully assume that OFCCP is strengthening its enforcement in the area of compensation discrimination . . .” The DOL is specifically seeking comments on its proposed approach to use objective industry standards to focus or prioritize contractors for compliance evaluations. Comments on the proposed rule are due by November 6, 2014.

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