EXPLAINING WHO IS WORKING FOR YOU

EEOC survey collects data on employee ethnicity, job descriptions

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Many employers will be required to submit an annual Employment Information EEO-1 Survey to the U.S. Equal Employment Opportunity Commission (EEOC) in accordance with the recently revised format promulgated by EEOC, on or before Sept. 30, 2008. The revised format differs from the previous one in that it contains new race/ethnicity groupings that notably include a "two or more races" category and new job classifications that separate executive-level managers from mid-level managers.

Because the revised format has many employers scratching their heads as they prepare to submit their forms on or before the September deadline, this article will explain the content and significance of the revisions.

What is the EEO-1?

The EEO-1 is a government form that requires covered employers to provide a census of their employees by job category, gender and race/ethnicity. Only certain employers are "covered employers" and are thus required to submit the form: (1) private employers with 100 or more employees, and (2) private employers that have a government contract of at least $50,000 or more *and* 50 or more employees.

The EEOC indicates on its web site that the preferred method for filing the EEO-1 report is electronically, via the EEO-1 On-

WHILE SELF-IDENTIFICATION IS THE PREFERRED METHOD OF GATHERING INFORMATION, THE EEOC STRESSES THAT SUCH EMPLOYEE SURVEYS MUST BE VOLUNTARY AND SHOULD NOT BE USED TO MAKE ANY EMPLOYMENT-RELATED DECISIONS.

line Filing System. (First-time filers may register for a username and password at: http://apps.eeoc.gov/eeo1/register.jsp.)

New Race Categories

The EEOC has declared that the revised EEO-1 report "recognizes the shifting demographics of today's workplace." The changes will also "better enable the Commission to accurately monitor the advancement of women and people of color into the upper ranks of management." In recognition of these "shifting demographics," the revised form contains seven race/ethnicity categories, in contrast to the previous form which contained five categories.

The seven new categories are: 1) Hispanic or Latino; 2) White (Not Hispanic or Latino); 3) Black or African American (Not Hispanic or Latino); 4) Native Hawaiian or other Pacific Islander (Not Hispanic or Latino); 5) Asian (Not Hispanic or Latino); 6) American Indian or Alaskan Native (Not Hispanic or Latino); and 7) Two or More Races (Not Hispanic or Latino). In contrast, the previous categories were: 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.

Significantly, in the new form, the category "Hispanic or Latino" is separated from the other identifiers, meaning that employees reported as "Hispanic or Latino" may not be reported under any of the remaining categories. For example, a person of "Hispanic or Latino" origin may not also be reported as "White." Furthermore, the new form breaks out the identifier previously designated as "Asian" into "Native Hawaiian or other Pacific Islander" and "Asian."

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The new form also changes the identifier previously designated as "Black" to "Black or African-American."

Most significant is the addition of the "Two or More Races" category to the new form. Under this category, employers are required to report employees who identify with two more races that are not Hispanic or Latino.

Surveying The Workforce

In issuing the revised EEO-1 form, the EEOC published an Instruction Booklet to assist employers in filling out the new form (which may be accessed at www.eeoc.gov/eeo/survey/2007instruct.html.)

In the booklet, the EEOC notes that the preferred method for reporting race/ethnicity information is "self-identification," and that employers are strongly encouraged to survey their workforces by asking their employees how they identify themselves. (Note: While self-identification is the preferred method of gathering information, the EEOC stresses that such surveys in the workplace must be voluntary and should not be used to make any employment-related decisions. The EEOC has also noted that is acceptable for an employer to use visual observation of an employee's race/ethnicity in completing the EEO-1 form should an employee refuse to self-identify.)

The EEOC recommends that employers use a "Two-Question Approach" to survey their workforces. According to the "Two-Question Approach," the employer should first ask whether the employee identifies himself or herself as Hispanic/Latino. Then, if the employee answers "no," he or she is asked to mark the appropriate racial identifier.

The EEOC additionally notes that an employer may choose whether to include or exclude the "two or more races" category in its employee survey. An employer may include the "two or more races" category and instruct employees to mark the Non-Hispanic or Latino race category that applies (i.e., White; Black or African American; Native Hawaiian or other Pacific Islander; Asian; and American Indian or Alaskan Native; or Two or More Races).

Alternatively, an employer may exclude the "two or more races" category and instruct the employee to mark *all* the Non-Hispanic or Latino race categories that apply. Employers should note that if they choose to *include* the "two or more races" category, they may not be informed as to the specific race categories that a "two or more races" person identifies, because an employee may check "two or more races" and not check any other category. Note that the EEOC does not require employers to report the underlying race categories if employees identify themselves as "two or more races."

New Job Categories

In addition to providing gender/race/ethnicity information on the EEO-1, employers are also required to report the job category to which each employee belongs by using a numerical code. Previously, EEO-1 codes were assigned as follows: 1 – Officials and Managers; 2 – Professionals; 3 – Technicians; 4 – Sales Workers; 5 – Administrative Support Workers; 6 – Craft Workers; 7 – Operatives; 8 – Laborers and Helpers; and 9 – Service Workers.

Significantly, the new EEO-1 divides the "Officials and Managers" category into two subcategories: 1.1 – "Executive/Senior Level Officials and Managers" (those who plan, direct and formulate policy and provide the overall direction of the organization); and 1.2. – "First/Mid-Level Officials and Managers" (those who direct implementation or operation within the parameters established by Executive/Senior Level Management).

The rest of the categories have not been subdivided. To accurately report using the new "Officials and Managers" subcategories, employers should review their employees' job descriptions and responsibilities.

Covered employers should note that the filing of EEO-1 reports is required by law. Those who fail to file the EEO-1 on or before Sept. 30 may be compelled to file a report upon order from a U.S. District Court. Further, an employer with a federal contract may risk termination of the contract and debarment from future federal contracts. Employers who require an extension may make such a request before the Sept. 30 deadline by e-mailing EEOC at: e1.extensions@eeoc.gov.   ∎