

Employer Collection and Reporting Checklist

Employers should closely monitor this proposal in light of the significant additional data collection and reporting burdens, and the potential for legal and monetary exposure from defending agencies' targeted investigations of pay practices.

In addition, here are actions employers can consider now:

- **Submit Comments.** As an individual employer or as part of an industry association or advocacy group, employers can correct the EEOC's substantial underestimates of the time and cost the proposal imposes and underscore the significant, unresolved confidentiality concerns.
- **Conduct a Proactive EEO Pay Self-Analysis to Assess Risk.** Employers can use the proposed reporting tool or other methods to identify areas of exposure that could emerge in systemic investigations by EEOC or OFCCP. There is a good opportunity now, before the expected new obligations become effective in 2017, to identify and address areas of unexplained pay disparities.
- **Ensure Self-Analysis is Conducted under Attorney-Client Privilege.** Statistical analyses prepared as part of a self-assessment should *not* be done internally by the employer's compensation department or externally by non-attorney consultants without having an attorney directing the project to provide legal advice regarding legal compliance.
- **Speak with IT Function and Outside HRIS and Payroll System Vendors.** As proposed, the new obligations would require new programs or updates to systems and software to minimize the data collection and reconciliation burdens. Assess the costs associated with such changes and consider budgeting for it. These possible costs could be part of submitted comments.
- **Is Your Organization required to Report?** Larger employers are well aware of EEO-1 reporting obligations. Employers who have not previously filed, but have reached the 100 employee threshold, are required to file EEO-1 reports. EEOC has sued employers solely for the failure to file EEO-1 reports in the past and may use the failure to file an EEO-1 reports to support a substantive discrimination claim.

Jackson Lewis will continue to monitor and report on developments. Please feel free to contact a Jackson Lewis attorney if you have any questions.