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BLOGS

Employment Law Updates; Labor & Unions

As the World Turns – (Another) Trump-Era Department of Labor Policy Reversal

Last month, on September 2, 2021, the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP), which enforces federal government contractor requirements, rescinded a Trump-Era notice of intent not to use EEO-1 Component 2 employer pay data to analyze pay equity issues. The OFCCP stated that “it was premature to issue a notice stating OFCCP did not expect to find significant utility in the data.” [84 FR 49354 \(September 2, 2021\)](#). The EEO-1 Component 2 Data was last collected by the federal government for calendar years 2017 and 2018 and consists of aggregated data on EEO-1 employers’ employee pay and hours worked. In 2019, both the Equal Employment Opportunity Commission (“EEOC”) and the OFCCP announced intentions regarding Component 2 Data. The EEOC cited the federal Paperwork Reduction Act as a reason not to continue to collect Component 2 Data, while the OFCCP’s notice stated that it would not “request, accept, or use Component 2 data, as it does not expect to find significant utility in the data given limited resources and [the data’s] aggregated nature.” *4 FR 64932 (Nov. 25, 2019).

Changing its tune under the Biden administration, the OFCCP now believes that the decision not to request, accept or use Component 2 Data was counter to the agency’s interest in promoting pay equity by federal government contractors. The OFCCP’s [September 2, 2021 notice](#) states, “there are substantial reasons to believe that the Component 2 data could be useful to OFCCP’s enforcement.” The notice further states, “OFCCP intends to devote further agency resources to evaluate the data’s utility because the joint collection and analysis of compensation data could improve OFCCP’s ability to efficiently and effectively investigate potential pay discrimination. Also, analyzing compensation data in conjunction with other available information, such as labor market survey data, could help OFCCP identify neutral criteria to select contractors for compliance evaluations.”

Although the EEOC has not reinstated an obligation for employers to submit Component 2 Data for 2019 and 2020 in their EEO-1 data due in October 2021, it seems possible that enhanced reporting requirements may resurface in light of these agencies’ focus on pay equity issues. Also, federal contractors can expect the OFCCP to potentially come calling, this time to conduct a pay equity audit.