Equal Pay Takes Center Stage with New EEOC Pay Data Rule

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At last year's Academy Awards, supporting actress winner Patricia Arquette used her time on the podium to highlight the continued pay disparity between men and women. The speech renewed focus on equal pay. Following the speech, California, home to Hollywood, passed a new Fair Pay Act dubbed the toughest in the nation. California now requires men and women to be paid equally for "substantially similar work" as opposed to the more amorphous "equal work."

California's law went into effect on January 1. Now Washington, D.C. is renewing focus on equal pay. Last week, on the seventh anniversary of signing the Lilly Ledbetter Fair Pay Act, President Obama announced proposed new EEO-1 reporting requirements for federal contractors and other employers with more than 100 workers.

Currently, employers required to file EEO-1 reports provide the federal government with workforce profiles that are sorted by race, ethnicity and gender. The proposed new requirement would add data on pay ranges and hours worked to the information collected on EEO-1 reports. The Equal Employment Opportunity Commission ("EEOC") would be able to use this additional information to evaluate pay practices to prevent pay discrimination and strengthen enforcement of existing discrimination laws.

According to the White House, the new proposal would cover more than 63 million Americans. Of course, the proposal is not without critics. Many experts have noted the pay range data being collected leaves no room for consideration of the numerous factors that affect an individual's pay beyond gender, such as performance, education and seniority.

If the proposal proceeds as scheduled, the new rule could be in place by September 2016, with employers required to submit their pay data for the first time in September 2017. In the interim, employers should begin preparing for increased scrutiny of pay practices. Employers should make it a priority to review their pay structure to identify any wage disparities by conducting a gender-specific wage audit.

By conducting a self-audit, employers will be able to minimize the risk of an equal pay investigation by the EEOC or lawsuit by a former employee. The self-audit will permit employers to identify and correct any wage disparities between men and women that cannot be justified by legitimate, nondiscriminatory reasons such as performance or seniority.

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