



National Payroll Reporting Consortium

PO Box 850 ★ Henrietta, NY 14467-0850 ★ www.NPRC-Inc.org

August 13, 2016

Mr. Joseph B. Nye
Policy Analyst, Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW.
Washington, DC 20503

Ms. Bernadette Wilson
Acting Executive Officer
Equal Employment Opportunity Commission
131 M Street NE.
Washington, DC 20507

Via email: oir_submission@omb.eop.gov

Via www.regulations.gov

Re: Final Comment Request: Revision of the Employer Information Report (EEO-1)
(7/14/2016) ID: EEOC-2016-0002-0340

Dear Mr. Nye and Ms. Wilson:

Thank you for many clarifications provided in the July 14, 2016 Paperwork Reduction Act Notice of the revised Employer Information Report (EEO-1), which adds W-2 (Box 1) earnings and hours-worked data to the EEO-1 report. The National Payroll Reporting Consortium (NPRC) offered comments on the Feb 1, 2016 notice of revision of the Employer Information Report (EEO-1).

NPRC is a non-profit trade association whose member organizations provide payroll processing and related Human Resource services to over 1.5 million employers nationwide, covering over one-third of the private sector work force. Payroll service providers improve the efficiency of employment-related reporting and improve compliance.

The NPRC is neutral as to the appropriateness or need for the proposed changes to the EEO-1 annual report. However, we serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employer reporting. We appreciate the opportunity to comment on revised proposal.

We agree with the adoption of FLSA definitions for hours worked.¹ This definition is already

¹ *The Commission adopts the FLSA definition for “hours worked” because it is familiar to employers, designed in conjunction with pay, and applies to all employers subject to the EEO-1. (Related footnote (74): Under the Fair Labor Standards Act, employers must*



well-understood by employers and well established in administrative systems and training. Adoption of FLSA definitions also serves to clarify many common ambiguities, because there is an extensive body of guidance and case law addressing common questions in determining hours worked.

However, we believe that one further clarification related to the hours-worked reporting requirement is necessary to avoid significant reprogramming of employer payroll and time-keeping systems. The clarification is relatively minor and would serve to improve the integrity of the resulting reported EEO-1 data.

The preamble states that employers “will report W-2 income and hours worked data for these employees for the entire year ending December 31st.” (81 Fed. Reg. 45485) Thus, under the proposed revision to EEO-1 reporting, employers would summarize their employee census data (by the various categories) based on (1) total hours worked within the entire calendar year², and (2) total W-2 Box 1 earnings (wages) paid within the calendar year.

This creates a disconnect, because some wages paid within a calendar year will relate to hours worked in the prior calendar year, and some hours worked in the current calendar year will be paid in the subsequent year. Optimally, the EEO-1 report should reflect W-2 Box 1 earnings and the *corresponding* hours worked. To do otherwise would be to invite anomalies (i.e., hours worked that bear no relation to the corresponding wage payments, which may skew the results).

Additionally, most employer payroll and time-keeping systems collect and store hours worked by pay period. For example, the hours worked for a particular employee for a biweekly payroll period ended 12/22/2017 might be recorded in the employer’s payroll and time-keeping systems as “80 hours.” The wages associated with the payroll period ended 12/22/2017 might be paid on 12/29/2017, representing the final wage payment for the

keep certain records for employees who are subject to the minimum wage provisions alone, or to both the minimum wage and overtime provisions, including records of hours worked each workday and total hours worked each workweek. 29 CFR 516.2(a)(7). Employers are not required to maintain hours worked records for employees who are exempt from minimum wage or minimum wage and overtime requirements. 29 CFR 516.3. “Hours worked” under the FLSA includes “(a) [a]ll time during which an employee is required to be on duty or on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so.” 29 CFR 778.223. Unlike the ACA definition, it does not include paid days off.)

² *The Commission will require private employers and contractors to report the “hours worked” as recorded for FLSA purposes for nonexempt employees in Component 2 of the proposed EEO-1. “Hours worked” will be reported for the total number of employees in each pay band by ethnicity, race, and gender, for the entire calendar year. For example, assume an employer reports on the EEO-1 that it employs four African American women as administrative support workers in the sixth pay band. The employer would report their total “hours worked” for the entire year in the appropriate pay band cell under “Hours Worked” (for example, 8,160 hours). (emphasis added)*



year. Thus, W-2 Box 1 earnings would reflect wages paid through 12/29/2017 and hours worked through 12/22/2017. However, under the FLSA definitions adopted for the purposes of EEO-1 reporting, the employer would need to perform the additional step of compiling hours worked during the closing days of the calendar year that are not paid within the calendar year (i.e., which fall into the first pay period of the next year). In this example, the employer would need to determine (and include in the EEO-1 report) the hours worked after 12/22/2017. They would also need to determine (and subtract from the EEO-1 report) any hours worked in the prior year (2016) for which wages were paid in 2017.

The problem relates to hours worked in payroll periods that span the beginning or end of a calendar year. Unless an exception is established, employers may need to modify their payroll and timekeeping systems to distinguish hours worked in the calendar year. This would be a very substantial and costly change. More importantly perhaps, if reported this way, the hours worked would not correspond to the wages being reported.

Consequently, we recommend that the EEOC establish an exception to the FLSA hours-worked definition in any final notice. The exception would recognize that employers generally summarize and store hours worked on a pay period basis, and in order to avoid unnecessary computer systems reprogramming, the EEOC could offer a special rule for payroll periods that span calendar years.

Suggested Exception

The EEO-1 report will generally reflect data within each calendar year. However, employers may report aggregate hours worked corresponding to wages paid within the calendar year. This may exclude hours worked in any days of the calendar year that are included in the payroll period associated with the first wage payment of the following calendar year. Correspondingly, aggregate hours worked within a year may also include hours worked in the prior calendar year for which wages are paid in the current calendar year.

Examples:

1. An employer pays employees on a biweekly basis. If the final payroll period of the year ends on 12/22/2017, and the corresponding wages are paid within 2017 (e.g., on 12/29/2017), representing the final wage payment for the year, the employer may include, for the EEO-1 report, aggregate hours worked through 12/22/2017. The employer may exclude hours worked after 12/22/2017, if the wages corresponding to those hours worked are paid in the subsequent year (e.g., on 1/12/2018). Additionally, for the 2017 EEO-1 report, the employer may include within aggregate hours worked any hours worked in 2016 for which wages are paid



in 2017.

2. An employer pays employees on a weekly basis. If the final payroll period of the year ends on Saturday, 12/24/2017, and the corresponding wages are paid on 12/27/2017, the employer may exclude from the 2017 EEO-1 report any hours worked after 12/24/2017, for which wages are paid in 2018 (e.g., on 1/3/2018). Correspondingly, the employer may include within aggregate hours worked for the 2017 EEO-1 report any hours worked after Saturday, 12/25/2016, for which wages are paid in 2017 (e.g., on 1/4/2017).

Thank you for the opportunity to offer comments on the proposed revision of the Employer Information Report (EEO-1). Members of the National Payroll Reporting Consortium would be happy to discuss this further with the Commission if it would be helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Isberg", is positioned above the typed name.

Pete Isberg
National Payroll Reporting Consortium, Inc.
Pete_Isberg@nprc-inc.org
www.nprc-inc.org
909 971-7670