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FOR YOUR INFORMATION

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News For School Clients

Elementary-Secondary Staff Information Report: EEO-5 Report

The United States Equal Employment Opportunity Commission (EEOC) is the Nation's primary enforcer of the civil rights employment laws, which prohibit discrimination in employment on the basis of race, national origin, color, religion, sex, age, and disability. One of those laws, Title VII of the Civil Rights Act of 1964 (Title VII), not only prohibits discrimination, but also requires employers to make and keep certain records and to make reports to the EEOC, as required.

In accordance with the provisions of Title VII, the EEOC has issued regulations setting forth the reporting requirement for various kinds of employers. Title 29 C.F.R. § 1602.41, et seq., requires elementary and secondary public school systems and districts to submit to the EEOC a report formally known as the Elementary-Secondary Staff Information Report, but more commonly known as the EEO-5 Report. The EEO-5 Report is a survey conducted biennially, in the even numbered years, and covers all public elementary and secondary school districts with 100 or more employees in the United States. It requires each covered school district to detail the sex and race/ethnic composition, by job category, of elementary and secondary school staff. Employment statistics must cover the payroll period closest to October 1 of the reporting year.

According to the EEOC, school districts may acquire the sex and race/ethnic information either by a visual survey of the work force, or from the employees' post-employment records. The EEOC does not encourage direct inquiry of the employees as a method of determining racial ethnic identity, unless other methods of determining racial or ethnic identity are impractical.

The data collected in the EEO-5 Report is used by the EEOC to investigate charges of employment discrimination against elementary and secondary public school districts. It is also used to support EEOC decisions and conciliations, and for research. In addition, the EEOC shares the data with the Department of Education's Office for Civil Rights (OCR) and the National Center for Education Statistics (NCES).

The regulations dictate that the completed EEO-5 Report must be retained for three years at the school district's central office.

The EEOC will begin the 2008 survey with the distribution of the materials in July 2008. The EEOC's regulations require that the materials be filed with the EEOC by November 2008. However, the EEOC's current bulletin suggests that the materials will be due to the EEOC on September 30, 2008. It is advisable to read carefully the directions that accompany the EEO-5 Report

when the school district receives it this summer.

In 2007, the Employer Information Report, or the EEO-1 Report, as it is commonly known, was modified primarily to revise the race/ethnic categories by adding a new category titled: "two or more races"; dividing "Asian or Pacific Islander" into two separate categories; "Asian" and "Native Hawaiian or other Pacific Islander;" renaming "Black" as "Black or African American"; renaming "Hispanic" as "Hispanic or Latino"; and by strongly endorsing employee self-identification of race and ethnic categories, as opposed to visual identification by employers. School districts will not be required to utilize these new race/ethnic categories in the 2008 EEO-5 Report because the EEOC plans to give respondents a full reporting cycle to change their recordkeeping. Therefore the 2010 EEO-5 Report will require school districts to utilize the new categories.

According to the regulations, if the preparation or filing of the EEO-5 Report would create undue hardship, a school system or district may apply to the EEOC for an exemption from the reporting requirements set forth in the regulations. Such an exemption does not allow the school system or district to avoid reporting requirements altogether. Rather, it allows the school system or district to submit to the EEOC a specific proposal for an alternative reporting system, which the EEOC, at its discretion, may approve. It is important to remember

that such an exemption must be secured prior to the date on which the report is due.

School districts employing less than 100 employees are not completely relieved from the EEOC's reporting requirements. Title 29 C.F.R. § 1602.39 requires that every public elementary and secondary school system or district, including every individually or separately administered district within a system, with 15 or more employees and every individual school within such system or district, regardless of the size of the school to maintain all records and information which would be necessary for the completion of report EEO-5 whether or not it is required to file such a report under § 1602.41. Moreover, in unusual circumstances, the EEOC may direct a school district employing less than 100 employees to submit a report.

Any school system or district failing or refusing to file report EEO-5 when required to do so may be compelled to file such a report by order of a United States district court, upon application of the EEOC, or by the United States Attorney General. See 29 C.F.R. § 1602.43. Furthermore, an employer may be subject to criminal penalties include fines of \$500, and/or up to a year in jail for conduct constituting "interference" with the EEOC. Moreover, when an employer fails to maintain the records required by the EEOC, discriminatory conduct is presumed against that employer. Thus, civil penalties for failing to maintain records may include back wages, unpaid overtime, and other equitable remedies.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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