

# PUBLICATION

---

## Spoiler Alert: The EEOC is Quietly Figuring Out the Best Way to Collect Private Employers' Compensation Information

January 29, 2014

**Most following the federal government's efforts to collect employee compensation data are aware of the OFCCP's proposed requirement that federal contractors file an "Equal Pay Report" providing information on the salaries, wages, and benefits of their employees. These efforts have been well publicized. But the EEOC has been working towards the same goal, just much more quietly. In fact, the EEOC has already hired Sage Computing, Inc., an IT services firm based in Virginia, to conduct a 12- to 18-month pilot study to determine how employee compensation data can best be collected from most of America's private employers.**

The impetus for this ambitious policy was President Obama's pledge to ensure all employees receive equal pay for equal work. Currently, the government collects large amounts of data from federal contractors, but those companies make up only about 20% of America's private employers. The EEOC is attempting to drastically increase that percentage with hopes of requiring all employers with 100 or more employees to provide compensation data. Thus, instead of relying on employee complaints to reveal discriminatory pay practices, the agency has decided that it must screen for pay disparities even where there is no complaint.

Though you may not have heard much about it, this isn't a new initiative. In 2010, at the prompting of the Obama Administration, the EEOC, OFCCP, and Department of Justice asked the National Academy of Sciences to study how they could collect wage data from employers. The Academy studied the issue for well over a year and provided a report that was likely not what the agencies were hoping for. In its report, entitled "Collecting Compensation Data from Employers," available [here](#), the Academy explained that the enforcement agencies had the cart before the horse: Not only were these agencies not prepared to compile such data, they had no plan for what to do with the information once they got it. So, the Academy's first recommendation was that these agencies should develop a plan for what they would do with the data before they required employers to provide it. The Academy's second recommendation was for the agencies to commission a pilot study by an independent contractor "to test the collection instrument and the plan for the use of the data." That is what Sage Computing is doing today.

What do we know about the pilot study, including the "collection instrument" the EEOC may use? In August 2014, the EEOC issued a statement of work describing what it required of the consultant that would perform the pilot study (which turned out to be Sage Computing). Among other requirements, Sage Computing is attempting to determine the burden that would be imposed on employers and the EEOC by collecting this information. It is also studying how to best analyze the data, and it must recommend tests that best identify true pay disparities while controlling for the various legitimate factors that go into setting an employee's compensation. As for the collection instrument, the EEOC will likely require employers to complete revised versions of its EEO-1, EEO-4, and EEOC-5 forms, which Sage has been asked to draft.

Because new regulations have to be issued to bring this to fruition, the EEOC is at least a couple of years away from implementing this requirement for most private employers. What should employers do in the meantime? Analyze their compensation data before the EEOC does. Every private sector employer should consider conducting a comprehensive audit of their employees' compensation data, including all wage and hour policies. A solid audit will ferret out areas of concern now so that reporting this information to the EEOC

later will just be another administrative burden instead of the airing of dirty laundry that could lead to an expensive lawsuit.