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Preparations Independent Schools Should Consider Now for the 2008 EEO-1 Report Filing

There has been much debate in the independent school community regarding the legal obligation of an independent school to file with the EEOC a Standard Form 100, commonly known as an EEO-1 report. We traditionally have advised independent schools to file an EEO-1. However, to seek clarification, we contacted the EEOC regarding this matter. Initially, the EEOC informed us that independent schools were not required to file EEO-1 reports, but that answer has since been rescinded. The EEOC's most recent answer regarding this matter is in keeping with our initial advice: independent schools with more than one hundred employees do have a legal obligation to file EEO-1 reports.

The annual filing due date for EEO-1 reports is September 30. With the 2008 filing date fast approaching, now is the time to consider ways in which to improve your system to make filing your 2008 EEO-1 easier and more successful. Changes to the EEO-1 form that went into effect last year also need to be considered in the adoption of procedures for compliance.

The EEO-1 form asks employers to identify employees by job category, as well as race or ethnicity, and gender. The revised job categories are Executive/Senior Level Officials and Managers, First/Mid-Level Officials and Managers, Professionals, Technicians, Sales Workers, Administrative Support Workers, Craft Workers, Operatives, Laborers and Helpers, and Service Workers. Reference to the new EEOC job classification guide, available on the EEOC's website at <http://www.eeoc.gov/eo1/jobclassguide.html>, may be helpful in determining the category into which your workers fall. Additionally, we would be happy to assist you with classifying your employees.

The revised race and ethnicity classifications require an employer first to classify a worker on the basis of ethnicity: whether the worker is Hispanic or Latino. Employees who are Hispanic or Latino then do not need to be identified further by race. Any worker who is not Hispanic or Latino must be classified as White, Black or African American, Native Hawaiian or Other Pacific Islander, Asian, American Indian or Alaskan Native, or Two or More Races. Every employee also must be identified within his or her ethnic or racial classification as male or female.

Independent schools often wonder how best to obtain the information they need about their workforce in order to comply with EEO-1 reporting requirements. The EEOC strongly favors self-identification by employees as to their ethnicity and race. Since the categories of ethnicity and race on the EEO-1 report changed, some employees' self-identifications may not fit the current classifications. For example, an employee who previously had self-identified as "Asian or Pacific Islander," now would have the option of identifying himself as either "Asian" or "Native Hawaiian or Other Pacific Islander." In order to avoid the appearance of singling out a certain race or ethnicity for self-identification, we advise that employers institute a process whereby all current employees are given the option to self-identify or re-self-identify before the 2008 filing. New hires routinely ought to be given the option to self-identify near the beginning of their employment.

A survey, circulated to employees and marked as voluntary, wherein an employee can offer his or her name, position, gender, and race or ethnicity (as classified by the revised EEO-1), can be an effective method for collecting self-identification responses. Schools should include on any self-identification survey a statement indicating that the information requested is for statistical purposes only, to be used to supply the government with information, and in no way will be used in evaluating job applicants or in making personnel decisions. Self-identification should be a confidential process, and any record of self-identification should be maintained in a confidential manner, separately from the employee's other personnel files.

Regardless of whether an employer doubts the veracity of an employee's self-identification, the employer is to accept the self-identification made by the employee. If the employee has identified more about himself than required by the EEO-1 (e.g., he has identified himself as being of two specific races, such as Black and White, rather than answering simply that he is of two races), the employer should maintain that self-identification survey as an employment record, but should indicate on the EEO-1 only the required information.

In the event that an employee declines to self-identify, the school may conduct a visual survey or use other employment records in order to determine the information required by the EEO-1.

Employers are required, in filing an annual EEO-1, to use employment figures from any one pay period between July and September of the pay period in question. Instituting self-identification survey procedures for current employees and new hires now, in order to begin collecting the required information, will make filing the 2008 EEO-1 report much simpler.

The EEOC strongly encourages employers to use its online filing system or to submit the EEO-1 as an electronically transmitted data file. The online filing system has the advantage of streamlining the process from year to year—reusable data is automatically entered by the system. Additionally, a school would be able to access up to ten years' worth of its EEO-1 data stored on the secure, Web-based system. Information about online or electronic submission of the EEO-1 report can be found on the EEOC's Web site at <http://www.eeoc.gov/eeo1survey/index.html>.

If you desire the assistance of counsel in designing a self-identification procedure, addressing individual workforce concerns, or fulfilling your EEO-1 reporting requirements in any way, please contact us. We will be glad to assist you.

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