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### ***National Wage Data Are Useless for Benchmarking Purposes in Construction***

Construction is not a uniform, national industry. Rather, the construction industry in the United States is highly fragmented, regionalized and project driven. As such, national wage data is useless for benchmarking purposes. For example, carpenter wage rates in the Northeast may differ greatly from carpenter wage rates in the Southeast based on the local and regional economy, the demand for construction work, seasonal and weather factors, and fragmentation of the industry. A highway construction worker in Maine may work fewer hours than a highway construction worker in Georgia simply because the construction season is shorter in Maine than in Georgia because of weather. Specifically, in highway construction, neither asphalt nor concrete may be transported or poured when the temperature falls below freezing. This climate impact could lead to a great discrepancy in the overall earnings of the same position in different regions within a year.

To further elucidate the uselessness of national compensation standards for the construction industry, consider an example of two workers in the same position and regional area who work in different segments of the construction industry – building construction and highway construction. A building construction worker in Maine could likely work for more months within a year than a highway construction worker also in Maine. The building construction worker could work during the winter months because there may be some parts of the project that are enclosed, allowing work to be

for a wide variety of factors used to determine employee compensation such as education, training, experience, industry accreditations, tenure, attitude and job assignment, to name a few. For example, two employees performing the same job may receive different rates of pay simply because one worker has more tenure than the other, or perhaps one has a four-year degree and the other one does not. In construction, job assignments are also considered when determining compensation for an employee. For example, two project managers may be compensated differently for the reasons indicated above, or because the value and responsibility of the contract he or she is managing may vary greatly. For example, it would not be uncommon to see a large difference in compensation between a project manager for a company who is responsible for an \$80 million project versus a project manager for the same company who is responsible for managing a \$5 million project.

In these scenarios, employees performing the same or similar jobs will fall within a particular EEO-1 category but under different pay bands without an explanation for the difference. As a result, a review of the data could lead to an erroneous analysis by wage analysts.

As previously mentioned, the construction industry is project based, transitory and often seasonal, which makes it difficult to collect and track hours-worked data in the way the EEOC suggests. Unlike work performed in other industries, once a construction project is complete, workers often relocate to another project for the same or a different employer, depending on labor needs. This alone would make it extremely difficult for construction contractors to track hours-worked data and ensure the accuracy of such data. In addition, construction contractors could collect such data, but the data may significantly change as early as the next day because workers often move around to other projects or when workers are provided by union hiring halls, the workforce itself may change.

### ***Omit the Requirement to Report Hours-worked Data***

The EEO-1 job categories relevant to the construction industry include job classifications that may have varying wage rates. For example, the “Skilled Trades” category includes both skilled construction trades workers and the first-line supervisors of such trades. The same occurs for the “Laborers” category. Including the hourly wages of supervisors with the hourly wages of non-supervisors will inadvertently raise summary wage data, causing it to be flawed and incredibly misleading. Alternatively, when the wages of supervisors who are paid on a salary basis, where the number of hours worked isn’t tracked, is included with the wages of hourly workers, the summary data will be skewed in the opposite direction, inadvertently decreasing summary wage data.

AGC recommends that hours-worked data for all workers be excluded from the required report because tracking hours-worked data for non-exempt construction workers is overly burdensome and mixing the data of exempt and non-exempt workers in each pay band – even if using a basis of 40 hours for exempt workers – will cause the data to be inaccurate and skewed.

### **Additional Considerations Should the Proposal be Unnecessarily Implemented**

#### ***Use Box 5 W-2 Data Instead of Box 1 Data Along with Post-Annual Reporting***

AGC supports and appreciates the agency’s thoughtfulness in choosing to use total W-2 earnings as the measure of pay for the purpose of completing the revised EEO-1 report as this method could minimize the reporting burden for employers. Additionally, AGC supports and appreciates the EEOC accepting its suggestion to implement a post-annual reporting date of March 31 – a date that occurs after W-2 earnings are calculated. However, the EEOC is proposing to use Box 1 of Form W-2 instead of Box 5.

Box 1 should not be used for employees’ annual earnings as it does not reflect the total amount of compensation paid to an employee. The wages in Box 1 are reduced by pre-tax options such as 401k contributions, pre-tax healthcare premiums, etc. For example, if Box 1 is used, an employee who chooses not to contribute to his or her retirement plan will reflect significantly higher earnings than one who contributes on a pre-tax basis. Additionally, if Box 1 is used, an employee who does not participate in the company’s health plan and therefore doe±

While Box 3 is a better option than Box 1, Box 3 is capped at the maximum social security wage base which for 2015 and 2016 was \$118,500, and therefore it should not be used.

Box 5 is the best representation of an employee's earnings including retirement benefits but is reduced by pre-tax health care benefits.

Although none of the boxes on Form W-2 represent an employee's total compensation, it is a consistent method that can be used by all employers to provide wage information and should be the easiest for an employer to provide as it is already being provided for Form W-2 purposes.

***Allow Construction Employers to Choose a Workforce Snapshot Period that Falls Between the Months of May and October***

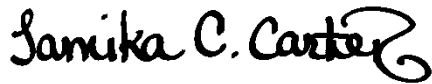
The EEOC is proposing to modify the "Workforce Snapshot Period" during which employers must identify the workforce that must be included on the EEO-

this analysis and subject the results of such analysis to public comment prior to implementing the use of the revised EEO-1 form. Additionally, to further mitigate the risks associated with providing transparent data, AGC urges the agency to allow employers to exclude workers from any EEO-1 job categories that result in fewer than ten workers, so that wages will not be identifiable to individual employees against the employees' will.

### **Conclusion**

AGC appreciates the OMB's efforts to review the EEOC's proposal that is intended to protect workers from possible wage discrimination. However, AGC does not believe new compensation reporting requirements for construction employers are necessary or reasonable for the reasons stated in this letter. If implemented, AGC kindly asks the EEOC to consider the suggestions outlined herein.

Sincerely,

A handwritten signature in black ink that reads "Tamika C. Carter". The signature is written in a cursive, flowing style with a large, decorative flourish at the end.

Tamika C. Carter  
Director, Construction HR

cc: Janis C. Reyes, Assistant Chief Counsel  
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