

SEC Adds Analysis of Excluded Employees to Pay Ratio Disclosure Proposal

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Continuing to add to the speculation that the pay ratio disclosure rules will be finalized by fall as we recently discussed [here](#), the SEC issued a [press release](#) yesterday that the staff has made available additional analysis related to the proposed rules.

The analysis by the Division of Economic and Risk Analysis (DERA), [posted](#) on the SEC website, considers the potential effects of excluding different percentages of employees from the pay ratio calculation. According to the press release, the staff believes that the analysis will be informative for evaluating the potential effects on the accuracy of the pay ratio calculation of excluding different percentages of certain categories of employees, such as employees in foreign countries, part-time, seasonal, or temporary employees as suggested by commenters. The analysis is available for public comment until July 6.

The study notes that the staff is limited in its ability to quantify the potential effect of the exclusion of categories of employees due to the lack of data on the distribution of compensation at the companies that are subject to the proposed rule, and therefore must use projections based on evidence from studies such as labor reports, social security and Medicare data. For example, the study indicates that based on the U.S. Bureau of Economic Analysis (BEA) data, employees of U.S. multinational firms outside the U.S. on average receive lower compensation than employees located inside the U.S. However, for some firms with employees outside the U.S. in highly skilled occupations or firms with employees in jurisdictions with high labor costs in U.S. dollar terms, some employees outside the U.S. may receive higher compensation than employees located inside the U.S.

The study shows that the reported pay ratio of companies may be impacted differently depending on (a) whether the excluded employees are paid above or below the median distribution of overall employee compensation, and (b) the percentage of employees a company is able to exclude. The study shows that for instance, the exclusion of 5% of employees may cause the pay ratio estimate to decrease by up to 3.4% if the employees excluded receive below the median distribution of pay, or increase by up to 3.5% if the employees excluded receive above the median distribution of pay. If as much as 20% of employees are excluded, then the pay ratio may decrease or increase by up to 13% to 15%.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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