

New EEO-1 Report Finalized: Employers Required to Report Pay Data Starting with 2017 Report

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Employers will officially be required to report compensation data and hours to the EEOC beginning with the 2017 EEO-1 report. Last week, [the EEOC announced](#) approval of the revised version of the EEO-1 report. Although private employers have long been required to report sex and race/ethnicity to the EEOC, now private employers with 100 or more employees will be required to report employees' W-2 compensation information and hours worked. Data collected for private employers will go to the EEOC, while data collected for federal contractors and subcontractors will go to the OFCCP.

When does the new report go into effect?

The changes take effect for the 2017 reporting period. However, the deadline to file the first new report will be March 31, 2018, and March 31 every year thereafter. This is a change from the prior filing deadline of September 30.

The delayed filing deadline will give employers additional time to prepare the new reports. The change also aligns the EEO-1 with federal obligations for employers to calculate and report W-2 earnings.

What are the requirements?

The EEO-1 report has long required employers with more than 100 employees and federal contractors and subcontractors with more than 50 employees to report employees' race/ethnicity and sex to the EEOC in 10 different job categories (e.g., 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). This information will still be required in the new report.

The new report requires employers, including federal contractors and subcontractors, with 100 or more employees to submit compensation data and hours worked in each of the 10 job categories. Federal contractors and subcontractors with 50-99 employees will not be required to report pay data or hours worked but will still be required to report by sex and race/ethnicity as previously required.

To report compensation, each of the job categories are broken down into 12 different pay bands (e.g., Pay Band 1: >\$19,239; Pay Band 2: \$19,240-\$24,439; Pay Band 3: \$24,440-\$30,670; etc.). The compensation data is taken from employees' W-2 "Box 1" income, which includes wages, overtime, tips, bonuses and other earnings. For example, an employer would report that it employs five white females in the Executive & Senior-Level Officials and Managers job category who are in the 9th pay band (\$101,920-\$128,959) and four African American males in that job category who are in the 10th pay band (\$126,960-\$163,799). Employers should not submit any individual pay information or other personally identifiable information regarding its employees.

Employers must also report the aggregate hours worked by its employees in each of the job categories and pay bands. For non-exempt employees, employers must report actual hours worked (including overtime). For exempt employees, employers must report either: (1) 40 hours per week for full-time exempt employees or 20 hours per week for part-time exempt employees where exempt employees do not record their hours; or (2) the actual hours worked if tracked by the employer. Using the previous example, the employer would also report that the five white females employed in the Executive & Senior-Level Officials and Managers job category worked a combined total of 10,400 hours, and the four African American males in that job category worked a combined total of 8,320 hours (if 40 hours per week is used for the calculation).

Finally, the new rule moves the "workforce snapshot" period to October 1 through December 31 of the reporting year; previously, the period was July 1 through September 30 of the reporting year. Employers must then include all employees who were employed as of the pay period selected.

Employers should begin preparing now.

Although employers have 18 months between the filing of the 2016 report and the deadline to file the 2017 report, employers must start by ensuring that there are systems in place to track the required data. For example, HR systems that are used to collect and track gender and race data may not be linked with the systems that track compensation and hours worked. Therefore, compiling this data may be a time-consuming and costly process. 2017 is only a few months away, which does not give employers much time to confirm that their systems will allow the collection and reporting of the required information or to make any necessary changes to those systems.

In addition, employers should be proactive by conducting a pay equity analysis prior to the first reporting deadline in order to assess whether there appear to be any pay disparities, preferably with the involvement of counsel in order to protect the analysis under attorney-client privilege. If the analysis is conducted without the direct involvement of counsel, the employer may be required to produce any such analysis to the EEOC or OFCCP. If the data indicate pay disparities, employers should determine whether there are legitimate business explanations for the disparities, such as employee tenure, or whether any pay disparities need to be addressed. Employers should also review their job descriptions and compare these with the 10 job categories to ensure that job positions are reported in the correct job categories and that the assigned job category will support pay decisions. Employers will be in a far better position if they know what their data may indicate before turning that data over to the EEOC or OFCCP.

To help employers with the transition, the EEOC has announced that it will host free webinars for employers on October 20 and 26, 2016. Additionally, the EEOC has published a [Small Business Fact sheet](#) and a [Questions and Answers document](#).

National Law Review, Volumess VI, Number 277

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