

## EEOC Revises Equal Pay Data Reporting Proposal

On February 1, the EEOC proposed expanding data reporting requirements for the Employer Information Report EEO-1 that employers file annually with the agency. The proposal revised the EEO-1 to add employee pay and hours worked data to information that must already be disclosed. On July 14, the EEOC revised its proposal to move the due date of the filing from September 2017 to March 2018, but it will still require pay data. Employers will want to review their current pay practices and systems capabilities to address any concerns over the proposed reporting requirements.

### Background

With certain exceptions, private employers with 100 or more employees and federal contractors with 50 or more employees and a government contract worth \$50,000 or more are required to annually file a compliance survey — the Employer Information Report EEO-1 ([EEO-1 report](#)). The EEO-1 report provides the Equal Employment Opportunity Commission (EEOC) and the DOL's Office of Federal Contract Compliance Programs (OFCCP) with corporate-wide employment data and separate workforce profiles for each covered establishment in the U.S. In the filings, employers provide information about their employees' race, ethnicity and sex in each of 10 job categories. The agencies use the workforce data for enforcement purposes or in selecting facilities for compliance reviews.



On February 1, 2016, the EEOC in partnership with the DOL proposed new EEO-1 reporting requirements for employers — including federal contractors — with 100 or more employees starting with the 2017 reporting cycle. Under the proposal, employers would have to report compensation and hours worked data by gender, race and ethnicity in addition to the employment information they must already submit. (See our [February 26, 2016 For Your Information](#).)

## Revised EEO-1 Proposal

On July 14, the EEOC issued a [revised proposal](#) for EEO-1 data collection that is being submitted to the Office of Management and Budget for review and approval. The revised proposal includes important scheduling changes and clarifies pay and hours worked data that would be reportable.

### New Filing Schedule

While the initial proposal retained the existing September 30 filing deadline, the revision would delay the effective date of the amended EEO-1 form — and the due date for the first expanded compliance survey — from September 30, 2017 to March 31, 2018. As a result, employers would file no EEO-1 reports in 2017. For subsequent EEO-1 reports, the annual filing deadline would be March 31 of the year that follows the reporting year.

**Comment.** Neither the reportable data nor the reporting period for 2016 is affected by these changes. Thus, employers must file the currently approved EEO-1 by September 30, 2016.

### Workforce Snapshot Period

Starting with the EEO-1 report for 2017, the “workforce snapshot” period for counting the number of employees to be reported would shift to a pay period between October 1 and December 31 of the reporting year form — rather than the current period of July through September.

### Pay and Hours Worked Reporting

Beginning with the March 2018 filing, employers would be required to include the new pay and hours worked data in their information reports along with the demographic data currently required. However, because the March filing deadline would align EEO-1 reporting with the federal schedule for calculating and reporting W-2 earnings as of December 31, employers will not have to perform a special W-2 calculation for the EEO-1.

**Pay Data.** As previously proposed, the EEOC would have employers use W-2 earnings as the measure of pay for reporting purposes. While the initial proposal did not specify which box on the W-2 to use, the revised proposal clarifies that employers would use Box 1 of Form W-2 for their filings.

**Hours Worked Data.** In its initial proposal, the EEOC proposed collecting the number of “hours worked” for nonexempt employees by job category, subdivided into 12 pay bands. It also suggested that employers could use an estimate of 40 hours per week for full-time salaried workers.

For nonexempt employees, the revised proposal adopts the Fair Labor Standards Act’s definition of “hours worked.” For exempt employees, employers will have the option to report: a proxy of 40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees; or actual hours-worked data.

## In Closing

The changes initially proposed would require federal contractors and other employers with more than 100 workers to provide summary pay and hours worked data in addition to the employment information and workforce profiles employers must already submit on their EEO-1 reports. While the revised proposal does not change that, it does extend the due date for the first expanded filing to March 2018, revises the snapshot period, and changes the reporting period for the pay data and hours worked to the entire calendar year. The EEOC’s revision triggers a new 30-day period — or until August 15 — for public comment.

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