

EEOC to Require Summary Pay Data in EEO-1 Report

On September 29, the EEOC announced that it has finalized a revised EEO-1 report requiring employers with 100 or more employees to provide summary pay and total hours worked data in their annual filings. The expanded data collection will start with the 2017 filing, due on March 31, 2018. Employers will want to review their current pay practices, software, HRIS and payroll systems capabilities to address any concerns over the new 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 must file an annual compliance survey — the Employer Information Report EEO-1 (EEO-1 report) — with the Equal Employment Opportunity Commission (EEOC). The report provides corporate-wide employment data and separate workforce profiles for each covered establishment in the US, including information about employees' race, ethnicity and sex in each of 10 job categories. Both the EEOC and the DOL's Office of Federal Contract Compliance Programs (OFCCP) use the data for enforcement purposes or in selecting facilities for compliance reviews.

Earlier this year, the EEOC proposed new EEO-1 reporting requirements for employers — including federal contractors — with 100 or more employees, starting with the 2017 reporting cycle. The proposal added employee compensation and hours worked data by gender, race and ethnicity to the information that already must be disclosed on annual EEO-1 filings. In July, the EEOC revised its proposal to extend the due date of the first expanded filing from September 30, 2017, to March 31, 2018, revise the “workforce snapshot” period, and change the reporting period for the new pay and hours worked data. (See our [July 19, 2016 For Your Information.](#))

Revised EEO-1

On September 29, the EEOC [announced](#) that it had finalized the revised EEO-1 report. Beginning with the March 2018 filing, employers with 100 or more employees will be required to include the new pay and hours worked data in their information reports along with the demographic data currently required. The EEOC has posted the [new form](#) on its website, along with a [Small Business Fact Sheet](#) and [Questions and Answers](#).



Summary Pay Data

The new EEO-1 will require covered employers to report the total number of full- and part-time employees who were employed during the payroll period selected by the employer between October 1 and December 1 (workforce snapshot). Each employee in the workforce snapshot must be accounted for in one of 12 pay bands in each of the 10 job categories and 14 gender, race and ethnicity categories that are currently required. As initially proposed and later clarified, employers are instructed to use Form W-2 Box 1 earnings for the year as the measure of pay for all employees identified in the workforce snapshot.

Aggregate Hours Worked Data

On the revised form, covered employers will be required to report the total hours worked for all employees in the snapshot in their job category and pay band. For nonexempt employees, employers will report actual hours worked (as defined by the Fair Labor Standards Act) during the reporting year. For exempt employees, employers may report a proxy of 40 hours per week for full-time employees (20 hours per week for part-time employees) times the number of weeks the individuals were employed during the reporting year or their actual hours worked.

Comment. While the revised reporting requirements do not alter which employers must file an EEO-1 report, they may change how much information employers must provide. Federal contractors and subcontractors with 50 to 99 employees will continue to report as currently and will not be required to report summary pay or hours worked data. Federal contractors and subcontractors with fewer than 50 employees are not subject to EEO-1 reporting.

Challenges Ahead?

Earlier this year, Sen. Lamar Alexander introduced legislation ([S. 2693](#)) to block the EEOC from implementing the revised EEO-1 until it annually collects from federal agencies the same employment data as private sector employers would have to provide. (See our [April 4, 2016](#) *Legislate.*)

More recently, the US Chamber of Commerce raised **concerns** with the Office of Management and Budget about the privacy and confidentiality of EEO-1 data the revised report requires. Whether Congress or the Chamber will further pursue these issues remains to be seen.

In Closing

The revised EEO-1 will 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 they already submit on their annual reports. The first expanded filing will be due on March 31, 2018. Employers will want to review their current pay practices, software, HRIS and payroll systems capabilities to address any concerns they may have over the new reporting requirements.

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