

# LABOR & EMPLOYMENT

>>ALERT

## EEOC REQUIRES EMPLOYERS TO COLLECT AND SUBMIT PAY DATA BY SEPTEMBER 30, 2019

### UPDATE

The EEOC announced in September 2019 that it will not be collecting Component 2 data (i.e., pay and hours data) for the EEO-1 report after 2019, citing the administrative and financial burden on employers in complying with the requirement. The EEOC will continue its annual collection of Component 1 data (i.e. gender, race and ethnicity data) for future EEO-1 reports.

In April 2019, a federal judge ordered the U.S. Equal Employment Opportunity Commission (EEOC) to collect employee pay and hours data from employers by September 30, 2019 to comply with updated EEO-1 reporting requirements that were recently reinstated.

As a result of this development, employers with 100 or more employees should begin compiling this data for submission by the September 30, 2019 deadline.

### BACKGROUND

As background, in 2016, the White House Office of Management and Budget (OMB) under the Obama administration approved the EEOC's proposed revisions to the annual EEO-1 report (which is required of all employers with 100 or more employees and all federal contractors with 50 or more employees). The revisions contemplated employer reporting of: (1) summary pay data; and (2) aggregate hours worked data (collectively, "Component 2 Data"), in addition to the gender, race and ethnicity data (collectively, "Component

### THE BOTTOM LINE

Employers should immediately begin preparing to collect 2017 and 2018 employee pay and hours worked information (Component 2 Data) for submission by the **September 30, 2019** deadline. To do so, employers should coordinate with their human resources and information technology teams, as well as their payroll providers, to ensure that the Component 2 data can be prepared in the appropriate format for reporting.

Employers should also keep in mind that sex and race/ethnicity reporting (Component 1 Data) is still due by **May 31, 2019** as part of the annual EEO-1 report.

1 Data") that the EEO-1 report already requires on an annual basis.

The objective of the EEOC's new requirements was to obtain employer- and establishment-specific data for the purpose of assessing allegations of pay discrimination based on race and/or gender. Initially, the deadline for submission of the updated EEO-1

report (i.e., including Component 2 Data) was set for March 31, 2018.

In August 2017, the Trump administration suspended implementation of the new EEO-1 reporting requirements indefinitely. However, the deadline for employers to submit the regular EEO-1 report (i.e., without the Component 2 Data)

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remained March 31 of each year. That deadline was recently extended to May 31, 2019 due to the government shutdown in early 2019.

In March 2019, a federal judge in *National Women's Law Center, et al. v. Office of Management and Budget, et al.* issued an order lifting the Trump administration's suspension of the new EEO-1 reporting requirements. The EEOC then indicated to the court that the earliest it could begin collection of the Component 2 Data was September 30, 2019. Shortly thereafter, the court set this date as the deadline. On May 1, 2019, the EEOC confirmed that it would collect Component 2 Data for calendar years 2017 and 2018.

On May 3, 2019, the Department of Justice filed an appeal of the judge's order in *National Women's Law Center*. However, the EEOC recently stated on its [website](#) that this appeal does not change employers' obligation to file Component 2 Data for calendar years 2017 and 2018 by September 30, 2019. As of now, this is the current status but could be subject to change.

### SUMMARY OF THE UPDATED EEO-1 REPORTING REQUIREMENTS

The reporting of Component 2 Data will be based on the "workforce snapshot period." The workforce snapshot period is any pay period in October through December of the year being reported. For the Component 2 Data due by September 30, 2019, the workforce snapshot period for 2018 is any pay period during October 1,

2018 through December 31, 2018 and the workforce snapshot period for 2017 is any pay period during October 1, 2017 through December 31, 2017. Employers must then count the total number of full-time and part-time employees they have during these workforce snapshot periods and each one of these employees must be accounted for in reporting the Component 2 Data.

#### Summary Pay Data

To report pay data, employers must indicate the total number of full-time and part-time employees the employer had during the workforce snapshot period in each of 12 "pay bands" listed for each EEO-1 job category. (Individual pay or salaries should not be reported). Employers should be familiar with the EEO-1 job categories, as those have long been used to report Component 1 Data in prior EEO-1 reporting cycles.

The ten EEO-1 job categories remain the same:

- 1) Executive/Senior Level Officials and Managers
- 2) First/Mid-Level Officials and Managers
- 3) Professionals
- 4) Technicians
- 5) Sales Workers
- 6) Administrative Support Workers
- 7) Craft Workers
- 8) Operatives
- 9) Laborers and Helpers
- 10) Service Workers

To assist employers with categorizing specific jobs, the EEOC provides a [guide](#) classifying hundreds of jobs into the ten EEO-1 job categories.

The 12 pay bands are a new addition to the EEO-1 report and are as follows:

Pay Band 1	\$19,239 and under
Pay Band 2	\$19,240 - \$24,439
Pay Band 3	\$24,440 - \$30,679
Pay Band 4	\$30,680 - \$38,999
Pay Band 5	\$39,000 - \$49,919
Pay Band 6	\$49,920 - \$62,919
Pay Band 7	\$62,920 - \$80,079
Pay Band 8	\$80,080 - \$101,919
Pay Band 9	\$101,920 - \$128,959
Pay Band 10	\$128,960 - \$163,799
Pay Band 11	\$163,800 - \$207,999
Pay Band 12	\$208,000 and over

Employers must count the number of employees they have in each pay band for each job category. If there are no employees in a particular job category or pay band, that field should be left blank. To determine which pay band in which to count an employee, employers should rely on the pay reported for income tax purposes that year on Box 1 of the employee's W-2 form.

#### Sex and Race/Ethnicity Data

After tallying the total number of employees in each pay band by job category, employers will enter this data in the appropriate columns of

the EEO-1 report based on the sex and ethnicity/race of the employees. (The sex and race/ethnicity categories remain the same as they did in prior EEO-1 reporting cycles). For example, an employer may report that it has 10 “Professionals” in Pay Band 8 (\$80,080 - \$101,919) who are Female and White.

### Aggregate Hours Data

Finally, employers must tally and report the number of hours worked in the calendar year by all the employees accounted for in each of the 12 pay bands (as determined by the workforce snapshot period). For non-exempt employees, the actual number of hours worked during the calendar year should be counted according to the pay records required by the Fair Labor Standards Act (FLSA).

For exempt employees, employers may either:

- 1) report 20 hours/week for part-time employees and 40 hours/week for full-time employees multiplied by the number of weeks worked in the calendar year; or
- 2) report actual number of hours worked by full-time and part-time exempt employees during the calendar year.

The Component 2 Data will be submitted via an online portal and the EEOC has stated that it will notify filers of the precise date the Component 2 Data portal will open. Employers should check the EEOC's [website](#) regularly for updates.

### EEOC Deadline Extensions Requests

The EEOC has also shortened the length of the available extensions for filing Component 1 Data that is due on May 31, 2019. Previously, employers could request a single 30-day extension, whereas now, employers can only request a single 14-day extension (i.e., through June 14, 2019). According to the EEOC website, any requests for extensions beyond the 14 days must be accompanied by a summary of the issue the employer is experiencing, which should be communicated to the EEOC's Employer Data Team.

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