

# EEOC SUES EMPLOYERS FOR NOT FILING EEO-1 REPORTS: 5 STEPS YOU SHOULD TAKE BEFORE JUNE 4 DEADLINE TO AVOID SIMILAR FATE

Insights  
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In an unprecedented action, federal workplace law officials just filed suit against 15 employers in 10 states alleging that they failed to file their mandatory EEO-1 reports and asking the court to order the employers to do so without delay. With the deadline for 2023 reports rapidly approaching, these lawsuits filed by the EEOC serve as a wake-up call to any employer that has not been meeting its reporting deadlines. With the 2023 filing deadline right around the corner – June 4 – what do you need to know about this landmark litigation and what five steps should you take if you haven't yet filed your EEO-1 report?

## EEOC Takes Aim at 15 Employers

The Equal Employment Opportunity Commission (EEOC) filed federal lawsuits against 15 employers in the past week, alleging they failed to comply with mandatory federal reporting requirements by not filing their EEO-1 reports.

- The lawsuits were filed in 10 states across the country, including New York, Florida, Georgia, Ohio, North Carolina, Texas, and Arizona.
- The employers named in the suits include companies from the retail, construction, restaurant, manufacturing, logistics, and service industries.
- The EEOC alleges the employers did not submit mandatory EEO-1 reports in reporting years 2021 and 2022.

## Related People



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- The lawsuits allege that the agency issued a notice of non-compliance and failure to file notification to the employers, but that the employers still failed to comply.
- The EEOC is not seeking a monetary penalty against the employers. It asks the courts to issue orders forcing the employers to prepare, execute, and file EEO-1 reports for the missing years – and to issue a court order requiring them to do so in the future.

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### EEO-1 Primer

Private employers with at least 100 employees and federal contractors or first-tier subcontractors with at least 50 employees need to organize employee demographic data by employee job category, as well as gender and race/ethnicity, and submit that data to the EEOC on an annual basis. They do so by filing an EEO-1 report. The EEOC uses this workforce demographic data for a variety of purposes including enforcement, analytics and research, and evaluation of industry trends.

While this requirement has been around for nearly six decades, some employers may have grown complacent given the lack of actionable steps the EEOC may have taken in the past to enforce these rules. With this week's flurry of lawsuits, however, you now have the clearest warning yet that compliance is essential.

### 5 Steps to Take Before June 4

Here are the five steps you should take to file your EEO-1 reports this year. If you have further questions, you can refer to the [2023 EEO-1 Component 1 Instruction Booklet](#) prepared by the EEOC.

#### 1. Pick a Date

Traditionally, EEO-1 reports require employers to pick a payroll end date between October 1, 2023, and December 31, 2023, as your "workforce snapshot period." This payroll period will become the basis for identifying which employees to report. New for this reporting cycle, the EEOC has said that you will need to file an EEO-1 report if you reached 100 or more employees *during any point* of the fourth quarter of 2023.

#### 2. Categorize Your Workforce

Next, ensure that your job titles are categorized correctly and consistently. The EEO job categories are:

(1.1) Executive/Senior-level officials and managers

(1.2) First/Mid-level officials and managers

(2) Professionals

(3) Technicians

(4) Sales workers

(5) Administrative support workers

(6) Craft workers

(7) Operatives

(8) Laborers and helpers

(9) Service workers

### 3. Let Your Employees Choose

Give your employees an opportunity to self-identify their gender and race/ethnicity, and provide a statement about the voluntary nature of the inquiry.

The race/ethnicity categories are unchanged for the 2023 filings:

- **Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
- **White (Not Hispanic or Latino):** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Black or African American (Not Hispanic or Latino):** A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino):** A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian (Not Hispanic or Latino):** A person having origins in any of the original peoples of the Far East, Southeast Asia,

or the Indian Subcontinent, including for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

- **American Indian or Alaska Native (Not Hispanic or Latino):** A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.
- **Two or More Races (Not Hispanic or Latino):** All persons who identify with more than one of the above five races.

Similar to last year's instructions regarding gender, employers may should report male and female employees in the report. Employers may voluntarily report non-binary employees via the comment section of the EEO-1 report.

Note that choices in future years might be changing given recent developments [which you can read about here](#). But no need to concern yourself about these changes during this reporting period.

#### **4. Choose a Point of Contact**

Designate an employee as the "account holder" who will file the EEO-1 report through the EEO-1 Component 1 Online Filing System (OFS). Note that there are separate instructions for new filers and for those who are changing their point of contact. Account holders must submit the workforce demographic data electronically in the OFS through either manual data entry or data file upload. The employer's certifying official must then certify the EEO-1 Component 1 report(s) in the OFS.

#### **5. File Right Away!**

File by June 4! And since you have waited until the last minute, prepare to be patient. In the past, the EEO-1 reporting system has slowed down significantly as the deadline approached, which makes filing more challenging. You might want to allow yourself sufficient time before the deadline so you aren't scrambling with technical challenges. Typically, the EEOC does not provide for extensions.

#### **Conclusion**

Fisher Phillips will continue to monitor any further developments in this area as they occur, so you should

ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have any questions about filing EEO-1 reports, please consult your Fisher Phillips attorney, the authors of this Insight, or a member of Fisher Phillips' [Affirmative Action and Federal Contract Compliance Practice Group](#).