



EEO-1 Reporting Requirements, Chapter 1: Who is Required to File, When, and What Happens if You Don't?

Insights

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In light of the federal court's recent decision in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, the new due date for EEO-1 filers to submit pay/hours worked data (now known as "Component 2" data) for calendar years 2017 and 2018 is September 30, 2019. The details were discussed in our May 3 [Legal Alert](#). This post is a part of a two-part series, covering when the EEO-1 is due, who is subject to the EEO-1 reporting requirements, and what happens if the EEO-1 report is not filed. A following post will get into the details of compiling and submitting pay data and best practices.

When is the EEO-1 Due?

The EEOC expects to begin collecting EEO-1 Component 2 pay/hours worked data for calendar years 2017 and 2018 in mid-July, and will notify filers of the precise date the survey will open as soon as it is available. While the federal government filed a Notice of Appeal in *National Women's Law Center* seeking to reverse the pay data requirement altogether, employers were cautioned that this Notice of Appeal does not alter EEO-1 filers' obligations to submit Component 2 pay/hours worked data by September 30. Therefore, EEO-1 filers should kick their collection efforts into high gear and begin preparing to submit Component 2 pay/hours worked data—like yesterday! Meanwhile, it is also important to remember that filers should continue to use the currently open EEO-1 portal to submit traditional demographic data (now called "Component 1" data) from 2018 by May 31, 2019.

Who is Required to File?

There is a common misconception that only federal contractors are subject to EEO-1 reporting requirements. However, the scope of EEO-1 report is far more reaching. Employers who meet the following criteria are required to file the EEO-1 report annually:

- Subject to Title VII of the Civil Rights Act of 1964, as amended, (and engage in interstate commerce) with 100 or more employees;
- Subject to Title VII of the Civil Rights Act of 1964, as amended, (and engage in interstate commerce) with fewer than 100 employees if the company is owned by or corporately affiliated with another company and the entire enterprise employs a total of 100 or more employees; or
- A federal contractor (private employer), who:
 - Is not exempt as provided for by 41 CFR 60-1.5;

- has 50 or more employees, and
 - is a prime contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order amounting to \$50,000 or more;
 - serves as a depository of Government funds in any amount, or
 - is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes.

Only those establishments located in the District of Columbia and the 50 states are subject to EEO-1 reporting requirements; no reports should be filed for establishments in Puerto Rico, the Virgin Islands, or other American Protectorates. Notably, the Component 2 pay/ hours worked data requirements due September 30 currently apply only to employers (including federal contractors and subcontractors) with 100 or more employees, not the lower federal contractor threshold. You can find more helpful information about EEO-1 filing on the EEOC's [FAQ](#) page.

What if I Don't File?

Although there is no direct penalty for not filing, section 709(c) of Title VII allows the EEOC to compel an employer to file the EEO-1 report by obtaining a court order from the United States District Court, which could lead to the employer being held in contempt. Under section 209(a) of Executive Order 11246, the penalties for failure by a federal contractor or subcontractor to comply may include termination of the federal government contract and debarment from future federal contracts.

Such action, however, would not be invoked until the EEOC has sent at least two or three notice letters. Also, prison isn't an option, unless an employer makes a willfully false statement on its EEO-1 report. Additionally, the regular demographic data report due May 31 is not a hard deadline per se, as employers may get an automatic two-week extension upon request.

Alternatively, if an employer claims that meeting the EEO-1 reporting requirements creates an undue hardship, it could apply for an exemption. If the employer demonstrates it is engaged in activities that make the reporting criteria not readily adaptable, then it could get special reporting requirements. Also, an employer could request to change the date for filing EEO-1 data or a change in the period for reporting. In such instances, however, the employer should advise the EEOC by submitting a specific written proposal for an alternative reporting system prior to report's original due date. Of course, an employer requesting special treatment or customized reporting requirements should expect increased scrutiny of its data by the EEOC's Joint Reporting Commission during the determination process—so this is an action that shouldn't be taken lightly and should only come after consultation with your pay equity counsel.

What's Next?

In light of the recent updates, the following considerations will ensure you are in the best position for EEO-1 compliance:

- Focus on complying with the May 31 deadline for the Component 1 traditional demographic data and then begin compiling Component 2 pay/hours worked data to meet the September 30 deadline;
- For Component 2 pay/hours worked data, determine how your W-2 pay data will be split into the 12 pay bands required for each of the 10 EEO-1 categories and how you will report your hours worked; and
- Review current pay systems and identify and address any areas of pay disparity now to minimize increased scrutiny in the future.

Due to all of the various federal requirements, coupled with varying state legislative developments, we strongly encourage you to get your employment attorney involved in this analysis early in the process. Ideally, you would work with counsel to conduct your initial review under the protection of the attorney-client privilege while you are assessing your workforce and the proper grouping for your employee population.

We will continue to monitor the situation and provide necessary updates, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Pay Equity Practice Group](#) or our [Affirmative Action and Federal Contract Compliance Practice Group](#).

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