



# EEOC Unveils New EEO-1 Report To Capture 2017 Pay Data

EMPLOYERS MUST SUBMIT NEW REPORT BY MARCH 31, 2018

Insights

10.10.16

In furtherance of its commitment to combating pay discrimination, the Equal Employment Opportunity Commission (EEOC) recently finalized its proposed changes to the Employer Information Report, commonly known as the EEO-1 Report. While the EEOC annually collects information about the number of employees by job category and by sex, race, and ethnicity, employers will also be required to provide summary pay data about their employees as of March 31, 2018.

This means that employers must report significant information about their pay practices to the EEOC, who in turn will use the information to identify disparities and areas of potential pay discrimination to determine where it will take enforcement action. While March 2018 seems far in the distant future, it is important to realize that this EEO-1 Report will capture compensation data for 2017, meaning that your pay practices will be under scrutiny in just a few short months.

Here are some frequently asked questions to assist you in preparing for this new employer obligation.

## What Is The EEO-1 Report?

The EEOC collects workforce data from all employers with 100 or more employees through an annual EEO-1 Report. The report, in its current form, collects data about gender, race, and ethnicity of employees by 10 different job groupings.

The new EEO-1 Report expands the reporting requirements significantly to obtain information on pay practices. In addition to reporting the number of employees by gender, race, and ethnicity in 10 job groupings, employers are now also required to provide employee compensation information and the number of hours worked by employees across 12 pay bands.

The data collected through the EEO-1 Report encompasses more than 63 million workers nationwide and is shared with other federal agencies, such as the U.S. Department of Labor (USDOL) and the Office of Federal Contract Compliance Programs (OFCCP), so that these agencies can enforce federal laws. The EEOC also publishes the aggregated data to the public.

## **What Changes Were Proposed?**

On January 29, 2016, the Obama Administration first proposed executive action through the EEOC to require certain businesses to provide detailed information about their pay practices. Employers would be required to identify salary information for their employees, broken down by gender and by race. Many observers identified serious flaws in the EEOC's proposed rule to implement the executive order, highlighting the undue burden on employers and questioning the utility of the data collection.

On April 1, 2016, Fisher Phillips submitted comments to the EEOC regarding the proposed regulations. The firm recognized that the goal of eradicating and better identifying discriminatory pay practices was a worthy endeavor. However, the comments stated that the firm was concerned that the proposed regulations, as initially written, would not accomplish anything noteworthy.

Subsequently, the EEOC issued a revised version of its proposed pay data collection rules in an effort to "think about how we minimize the burden on employers." However, the revised rule only made two substantive changes to the original rule: it clarified that employers should use Box 1 on the employee's W-2 form as a measure of reportable compensation, and it pushed back the deadline for the EEO-1 report to March 31, 2018. These changes did little to alleviate the burden on employers.

## **What Will The New EEO-1 Report Require?**

On September 29, 2016, the EEOC announced that it had finalized its proposed changes to the EEO-1 reporting form. The new EEO-1 Report is significantly more complex: whereas the old EEO-1 report had 121 data points, the new report consists of 3,360 data points. As noted above, the most significant change to the EEO-1 Report is that it will now collect summary pay data and aggregate hours worked data, information that employers were never required to report in the past.

Employers must now report the total number of employees (both full-time and part time) in each of 12 pay bands for each EEO-1 job category. The total number of employees is further broken down by gender (male or female) and across seven race and ethnicity categories (Hispanic or Latino, White, Black or African American, Native Hawaiian or Pacific Islander, Asian, Native American or Alaska native, or two or more races).

The ten EEO-1 job categories remain unchanged: (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; and (9) Service Workers.

In order to identify the pay band, employers must use the pay reported for tax income purposes in Box 1 of the W-2 form. The twelve pay bands are:

- \$19,239 and under
- \$19,240-\$24,439

- \$24,440-\$30,679
- \$30,680-\$38,999
- \$39,000-\$49,919
- \$49,920-\$62,919
- \$62,920-\$80,079
- \$80,080-\$101,919
- \$101,920-\$128,959
- \$128,960-\$163,799
- \$163,800-\$207,999
- \$208,000 and over

The EEO-1 Report collects hours worked data so that part-time and partial year employment is factored into the analysis of pay data. The data comes from the number of hours worked that are recorded under the requirements of the Fair Labor Standard Act (FLSA). However, for employees who are exempt from the FLSA, employers have the option to either: report 20 hours per week for part-time and 40 hours per week for full-time employees, or report the actual number of hours worked by the employee.

The data reported is based on a “workforce snapshot” period of any pay period between October 1, 2017 and December 31, 2017. Employers have the discretion to select any pay period during the three-month snapshot window for completing the EEO-1 Report.

The EEO-1 report must be filed by all employers with 100 or more employees by March 31, 2018 and will encompass pay data for 2017. The filing deadline will be March 31 of each year going forward.

### **How Can Employers Prepare For The New EEO-1 Reporting Requirements?**

The EEOC’s goal in gathering this additional data is to identify businesses that may have pay gaps, and then target those employers who are discriminating on the account of gender—and possibly race or ethnicity—through enforcement actions. The EEOC plans to publish reports using aggregated data and to train its investigators to use its Analytic Software Tool to identify potential indicators of discrimination warranting additional investigation.

Thus, your best course of action is to begin reviewing your pay practices, identifying and addressing any areas of pay disparity now, before the data must be reported to the EEOC. You should conduct a gender-specific internal audit, and possibly a race and ethnicity audit, to gain an understanding of your pay practices and have the opportunity to correct pay disparities before the formal reporting period.

You should also review compensation policies to ensure that a gender bias does not persist.

Additionally, you should review and revise job descriptions to be better able to determine which of the ten EEO-1 job categories each position should be reported under. You should consider doing the audit and review with an attorney's assistance to ensure that your work is covered by the attorney-client privilege.

You should also keep in mind that completing the new EEO-1 Report will be a costly and time-consuming endeavor. You may require updates to internal data collection systems so that the technology systems are able to gather and manipulate the pay data in the ways required by the new EEO-1 Report. Additionally, there is a cost associated with rectifying any identified unlawful pay disparity, as another employee's pay cannot be reduced to ensure pay equity.

If you have any questions about the new EEO-1 Report or how it may affect your business, please contact your Fisher Phillips attorney.

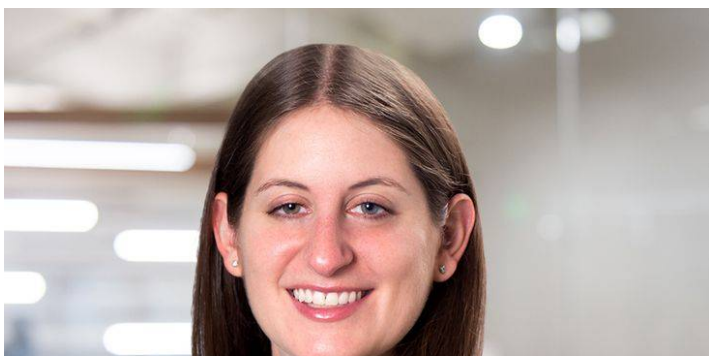
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*This Legal Alert provides an overview of a new federal requirement. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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