



Employers Get EEO-1 Reporting Reprieve In 2020

Insights

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Employers across the country got a bit of good news today as the federal government announced that the EEO-1 reporting process would be delayed by a year, with the next reporting deadline pushed to **March 2021**. You are now temporarily spared from having to submit the annual EEO-1 report which requires businesses to submit employment data related to race, ethnicity, gender, and job category. Specifically, your 2019 EEO-1 reports, which we had expected to be due by March 31, 2020 (but which employers could not submit because the portal was not available) are now officially postponed. What do you need to know about this welcome development?

What Happened?

Today's announcement from the Equal Employment Opportunity Commission (EEOC) acknowledges that the nation's employers are dealing with "unique and urgent" issues related to the COVID-19 pandemic. "The EEOC recognizes the impact that the current public health emergency is having on workplaces across America and the challenges that both employers and employees alike are now facing," the announcement said. "Delaying the collections until 2021 will ensure that EEO filers are better positioned to provide accurate, valid and reliable data in a timely manner."

Employers had begun anticipating that such an announcement was forthcoming. While the filings are generally due by March 31, the EEOC had not yet opened the collection process that would have permitted businesses to submit 2019 data to the agency. Oddly, although the EEOC requested approval from the Office of Management and Budget to renew its authorization to require the reports months ago, the approval was not forthcoming, as stated on the EEO-1 report landing page. Those businesses required to turn in the EEO-1 data – employers subject to Title VII with 100 or more employees and federal contractors with 50 or more employees – were uncertain of their obligations to report the 2019 data until today's announcement.

Who Else Is Impacted?

Besides the EEO-1, several other related data collection efforts were delayed by today's announcement. Local unions were given a reprieve for their EEO-3 reports (which collect information on the composition for their workforces by sex and by race/ethnic category), and public elementary and secondary school districts are temporarily spared from completing EEO-5 reports.

What Should Employers Do?

The agency recommended that covered employers should begin preparing to submit EEO-1 data from 2019 and 2020 in **March 2021**. The announcement said that the EEOC would notify businesses

from 2019 and 2020 in **March 2021**. The announcement said that the EEOC would notify businesses of the precise date that the surveys will open as soon as possible. Those subject to the EEO-3 and the EEO-5 should expect to provide their reports in January 2021. The EEOC said it would be directly reaching out to those businesses subject to the data collection requirements to inform them of the delay, so don't be surprised to receive a communication in the near future.

By way of reminder, the EEO-1 report no longer includes a pay data component after a September 2019 announcement from the EEOC eliminating the "Component 2" portion of the report. While it is possible that some form of pay data reporting could one day be reinstated through court order or a new streamlined rule from the EEOC, for now there is no obligation to collect and turn over compensation information as part of your annual filing. However, because state legislatures across the country will be taking it upon themselves to fill in the gap now left by the federal government, you should also make it a priority to review your current pay systems and identify and address any areas of pay disparity. Ideally, you would work with counsel to conduct this initial review under the protection of the attorney-client privilege.

We will continue to assess 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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Related People



Cheryl L. Behymer
Partner
803.255.0000
Email



Richard R. Meneghello
Chief Content Officer
503.205.8044
Email

Service Focus

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