

HR Insights

Controversial New EEO-1 Form Requires Pay Data Be Reported

For many years, certain employers have been required to file EEO-1 reports annually that show their number of employees by job category and then for each category, the number of employees by gender, ethnicity, and race. Starting with the 2017 EEO-1 report, a new level of reporting is required: summary pay data by gender, ethnicity, and race within each job category.

The new pay data reporting requirement has many employers concerned. According to the EEOC, the data is intended to help EEOC investigations regarding pay discrimination based on gender, race, and ethnicity. The OFCCP will use the EEO-1 pay data to help identify federal contractors and subcontractors for compliance reviews. However, providing the data, especially in the format required, creates significant administrative challenges for many employers. In addition, many question the validity of the data that would be provided for purposes of identifying pay discrimination. For example, the pay data required is based on employee W-2 information, specifically, the wages reported on an employee's W-2 form in Box 1. The fact that W-2 information would be used rather than pay rates is concerning in that the data could be skewed. For example, employers may have some employees in a category that work overtime and others that do not due to family or other obligations, skewing comparisons. Another example is that employees within a category could exercise stock options, which are taxable when exercised, and therefore resulting in higher W-2 wages than others in the same category that do not exercise stock options.

For employers with operations in multiple states, the going rates for jobs can vary significantly based on geographical differences. Also, within each job category, employers typically have a variety of jobs for which pay may vary. For example, in the professional

category, the pay range for a Financial Analyst may differ significantly from that for a Human Resources Generalist.

Another challenge is that employers must also provide the total hours employees in every pay band within every category worked. For many employers, payroll and timekeeping systems holding W2 data and hours are separate from HR systems holding job, gender, ethnicity and race data, requiring system and programming changes.

Employers Required to File EEO-1 Forms

Private employers located in the U.S. with 100 or more employees must file EEO-1 reports annually. In addition, Federal contractors and first-tier subcontractors with 50 or more employees and at least \$50,000 in contracts must file EEO-1 reports. However, only private employers and federal contractors with 100 or more employees must report summary pay data. Federal contractors with 50-99 employees are still required to file EEO-1 reports, but they are not required to include summary pay data.

Deadline for Submitting the New EEO-1 Reports

The deadline for submitting the EEO-1 reports for 2017 is March 31, 2018, and for subsequent years, every March 31st after that. The deadline for filing the 2016 EEO-1 report is still September 30, 2016.

Job and Gender, Ethnicity, and Race Categories

The job categories for EEO-1 filing purposes remain the same. They are:

- Executive/Senior Level Officials and Managers
- First/Mid-Level Officials and Managers
- Professionals
- Technicians
- Sales Workers
- Administrative Support Workers
- Craft Workers
- Operatives
- Laborers and Helpers
- Service Workers

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The gender, ethnicity, and race categories also remain the same. They are:

- Gender: Male and Female
- Hispanic or Latino
- White
- Black or African American
- Native Hawaiian or Pacific Islander
- Asian
- Native American or Alaska Native
- Two or More Races

Employers must provide the number of employees that fall within each category during the “workforce snapshot period.” Starting with the 2017 EEO-1 report, the workforce snapshot period will be any pay period an employer chooses between October 1 and December 31.

Summary Pay Data and Hours Worked

For employers required to report summary pay data, employers must count and categorize employees during the workforce snapshot period by pay band within each gender, ethnicity, and race category for each job category. The pay bands for all categories are:

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

Employers must also report the total number of hours worked that year by the employees in each pay band. For example, an employer must report the total number of hours worked by 30

Professionals who are non-Hispanic white women in pay band 7. For purposes of counting hours worked, employers have a choice with respect to hours for exempt employees. Employers can use 40 hours per week for full-time employees and 20 for part-time employees, or report actual hours worked.

Preparing for the New EEO-1 Report

To support employers in transitioning to the new EEO-1 report, the EEOC has published the technical file specifications for the revised EEO-1 data. A copy of the technical specifications is available on our website at <http://www.psandeassociates.com/resources/legislation-regulations-and-other-government-issued-materials/> or on EEOC’s website at <https://www.eeoc.gov/employers/eeo1survey/2017survey.cfm>. In addition, visit our website for a copy of the new EEO-1 Form and Instructions.

There May Be Some Hope!

Over the past several weeks, several business groups and lawmakers have acted to try to block and rescind the summary pay data requirement, including urging the White House to block the requirement. The U.S. Chamber of Commerce sent a formal letter to the Office of Management and Budget (OMB), the agency that approves all forms, requesting it review and rescind the EEOC’s revisions to the EEO-1 Form saying among other things that the change does not comply with the Paperwork Reduction Act. Your PS&A team will report any new developments as they occur.

For more information about the new EEO-1 reporting requirements, contact Pamela Sande & Associates at 774-251-3007. Also, visit our website at www.psandeassociates.com for more information.

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