

As we have reported ([here](#), [here](#), [here](#) and [here](#)), sweeping changes to employer obligations under the Equal Employment Opportunity Commission's (EEOC) EEO-1 reporting requirements are under way.

By September 30, 2019, employers must report 2017 and 2018 pay data for their workforce (referred to as "Component 2" data), broken down by race/ethnicity and sex.

On July 15, 2019, the EEOC officially opened to employers the Component 2 EEO-1 [online filing system](#). Per the EEOC, the file upload process will become available in August 2019. Below is a summary of employer obligations based on the most up-to-date guidance provided by the EEOC.

What Is Not Changing?

Companies with at least 100 employees (or federal contractors with at least 50 employees and a federal contract worth at least US\$50,000) must file an EEO-1 report with the EEOC containing employee gender and race/ethnicity data. This report for 2018 data was due May 31, 2019. As in past years, employers must report the number of permanent full-time and part-time employees in each of the 10 job categories by race/ethnicity and gender. The 10 job categories are not changing.

What Is Changing?

The EEOC now requires employers with at least 100 employees to collect and provide pay data information (Component 2 data), in addition to gender and race information. As noted above, the deadline to submit this pay data for the 2017 and 2018 calendar years is September 30, 2019. For employee-counting purposes, employers should look at their workforce during any selected pay period between October 1 and December 31 of the reporting year (the "workforce snapshot period"). To assist employers with data collection, attached is the recently released sample Component 2 data form. The EEOC has also provided [FAQs](#) relating to the new requirements. The following is a summary of the pay data employers must provide by September 30, 2019.

- Summary W-2 Box 1 income data by sex, race/ethnicity and job group. General instructions:
 - Tally the number of employees within the 12 pay bands for each EEO-1 job category ([see the attached sample form](#) for the pay bands).

- For each pay band, employers must enter the number of employees whose listed W-2 Box 1 income for the reporting year falls into that band, within the designated job category by gender and race/ethnicity. For employees who only worked a partial calendar year, employers should not calculate annualized earnings – employers should simply use the information in W-2 Box 1 in assigning employees to the relevant compensation bands.
- Employers are to report summary pay data, but not individual pay or salaries. The only employees whose pay and hours-worked data should be reported are the full-time and part-time employees who were on the employer's payroll during the workforce snapshot period.
- A summary of hours worked to account for part-time and partial-year employees. General instructions:
 - To account for part-time and partial-year employment, employers should report the hours employees worked over the reporting year. Each cell on the hours-worked matrix corresponds to a cell on the pay data matrix. Employers should total and record the hours worked during that reporting year by all the employees counted in the cell on the summary pay data matrix.
 - Employers should utilize the Fair Labor Standards Act (FLSA) categories, as follows:
 - For non-exempt employees, employers should report the actual hours worked as recorded for FLSA purposes. Per the EEOC, FLSA hours actually worked generally exclude paid time off.
 - For exempt employees, employers should report either (1) 40 hours per week for full time and 20 hours per week for part time, multiplied by the number of weeks employed for that reporting year; or (2) actual hours worked data. According to EEOC guidance, employers need not collect hours-worked data for exempt workers if they do not already track it.

Of note, on May 3, 2019, the Department of Justice appealed *National Women's Law Center v. Office of Management and Budget* and is actively challenging the required collection of Component 2 pay data. However, **the EEOC has made it expressly clear that this appeal is not staying its September 30, 2019 deadline**. Absent court intervention, Component 2 data must be reported by September 30, 2019.

Please contact us for assistance in gathering materials, or with any questions that arise during collection. We will issue updated guidance as it becomes available.

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