

Eye on Washington Regulatory Update

EEOC Issues New EEO-1 Information and Resources — Pay Data Reporting Update

The Equal Employment Opportunity Commission (EEOC) recently issued additional information to help employers comply with the upcoming EEO-1 Component 2 deadline. With the May 31, 2019 deadline for filing 2018 EEO-1 Component 1 submissions behind us, EEOC and employer focus has turned to the next EEO-1 due date — the September 30, 2019 deadline for filing 2017 and 2018 EEO-1 Component 2 compensation data. This will be the first time that covered EEO-1 filers will have to provide the EEOC with wage and hour data broken down by race/ethnicity, gender and job category (“Component 2 data”).

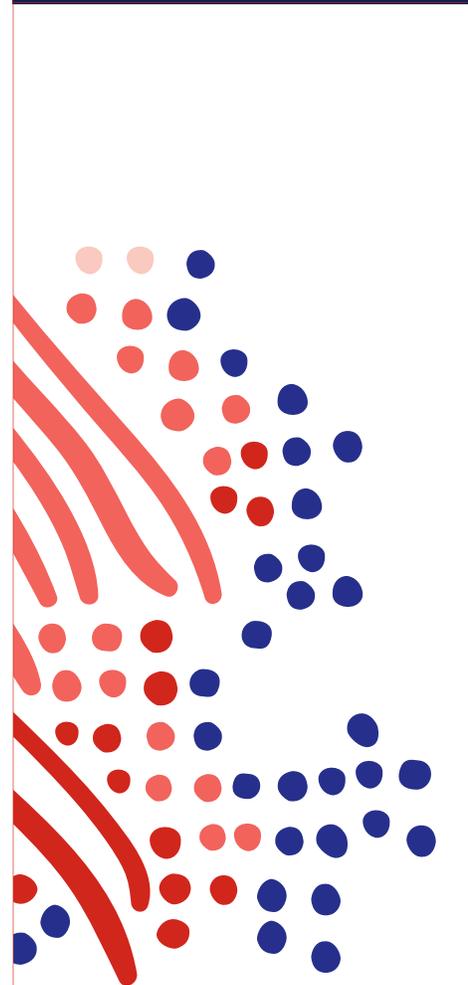
Background

The requirement to submit pay and hours worked data started with the EEOC’s 2016 announcement that certain employers would be required to provide compensation data with their annual EEO-1 reports on the race, ethnicity and gender of their workforces. In 2017, the Office of Management and Budget decided to indefinitely suspend the EEOC’s collection of pay data, but this stay was challenged in federal court litigation. The stay officially ended on April 25, 2019, when the United States District Court of the **District of Columbia issued an order reinstating employers’ obligation to report Component 2 data**. Pursuant to the Court’s April 25 order and the **EEOC’s May 3, 2019 announcement**, private employers — including federal contractors and first-tier subcontractors — with 100 or more employees have until **September 30, 2019 to submit 2017 and 2018 Component 2 data to the EEOC**.

New Guidance and Technical Requirements Issues

Since the Court’s decision, employers have been eagerly awaiting technical and substantive details for the newly-reinstated Component 2 data requirement. Employers were informed that the EEOC contracted the National Opinion Research Center (NORC) at the University of Chicago as its vendor to conduct the Component 2 EEO-1 Compensation data collection. Recently, the EEOC and NORC have taken steps to provide this information — including launching a website dedicated to Component 2 filing (<https://eeocomp2.norc.org>), uploading a **sample filing form, instructions for filing**, answers to **frequently asked questions, reference material** and technical specifications.

Although some questions remain outstanding, the new material directly addresses key questions relating to the online filing system and confidentiality, the workforce snapshot period, multi-establishment reporting, and calculating compensation and hours worked.



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Online Filing: The Component 2 Portal

The EEOC has confirmed that it will only accept Component 2 data filings electronically, through its web-based portal (<https://eeocomp2.norc.org>). This portal is expected to open on July 15, 2019 for employer filings.

To access the portal, each filer will need log-in credentials. On July 15, 2019, NORC will send each EEO-1 filer a User ID for the Component 2 portal both by email and U.S. mail, at each filer's registered EEO-1 email and mailing address. To ensure you receive the User ID and log-in instructions, filers should confirm that the EEOC has up-to-date registered EEO-1 contact information (email and mailing address).

After July 15, 2019, filers will complete registration on the portal using their User ID, FEIN, and email address. Final reports will be submitted by uploaded CSV data file, which will be encrypted for security.

The Workforce Snapshot Period

The EEOC has released a **sample form** for EEOC Component 2 data filings. As expected, employers will be required to report on all full- and part-time employees working during the "workforce snapshot period" — which is any pay period between October 1 and December 31, 2017 for the 2017 report, and between October 1 and December 31, 2018 for the 2018 report.

The EEOC has now clarified that employers are not required to use the same workforce snapshot period that it chose when submitting their EEO-1 Component 1 data for the relevant reporting year. Even if an employer chose an October 1 to October 15 pay period for its 2017 EEO-1 Component 1 filing, it can choose a different pay period for its 2017 EEO-1 Component 2 filing.

Multi-Establishment Reporting

The rules for multi-establishment filers are the same for Component 1 and Component 2 reports. Employers with multiple locations must submit reports for the employer in total, for headquarters, and for each establishment with more than

50 employees. And, as with Component 1 demographic data reporting, an employer that has locations with 50 or fewer employees may choose to report the compensation data with a detailed form (a Type 8 Establishment Report) or report the establishments with 50 or fewer employees in a list format (a Type 6 Establishment List).

Here, again, employers retain some flexibility to modify choices they made when filing their 2017 and 2018 Component 1 data. A multi-establishment employer who filed a Type 6 report for its 2017 Component 1 filing can choose to file a Type 8 report for its 2017 Component 2 filing.

Calculating Compensation and Hours Worked

The Component 2 sample form combines the traditional demographic information of a Component 1 report (including job category, gender and race/ethnicity) and adds two new elements: compensation and hours worked data for any full- or part-time employees who were on the employer's payroll during the chosen workforce snapshot period.

As anticipated, compensation must be reported by "pay bands" (\$19,239 and under, \$19,240-\$24,439, \$24,440-\$30,679, and so on), which are listed on the sample form. A worker's pay band is determined by the compensation set forth in Box 1 of the employee's IRS Form W-2 for the relevant reporting year.

The EEOC also has confirmed its previous guidance on calculating "hours worked." For each worker employed by the company during the workforce snapshot period, employers must report the total hours worked from January 1 through December 31 for the reporting year. For nonexempt or hourly employees, employers should use the total hours worked as recorded for FLSA purposes during the reporting year. (Paid time off is excluded from the hours worked calculation.) For exempt employees, employers have a choice: (1) report actual hours worked, if the employer tracked hours worked for exempt employees, or (2) use a proxy of 40 hours for full-time employees and 20 hours for part-time employees, multiplied by the number of weeks that each employee worked in the reporting year. An exempt, part-time employee who worked 37 weeks in 2017

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would have 740 hours worked (37 weeks x 20 hours). Employers may not substitute their own standard workweek with the proxy amounts provided by the EEOC.

Employers should keep in mind that, while the group of employees to be included in the Component 2 report are set by the “workforce snapshot period,” employers are required to report on annual compensation and hours worked — not just that for the workforce snapshot period.

How Will This Data Be Used?

One question that remains outstanding is how the EEOC will use the Component 2 data it collects, if at all. During the Obama administration, the EEOC indicated that Component 2 data could be used to identify pay inequities by industry and/or by specific employer. Since being ordered to reinstate collection of Component 2 data, neither the EEOC’s new Chair, Janet Dhillon, nor representatives of the Trump administration have indicated how they intend to review, analyze, or use the Component 2 data.

Next Steps

ADP® is closely monitoring all EEOC activity related to the reinstatement of the EEO-1 Component 2 data collection requirement and will provide updates as information is made available. ADP will host a Workplace Spotlight webinar on August 6, 2019, which will feature a deep dive into the EEO-1 Component 2 requirements and provide answers to frequently asked questions.

As a reminder, please subscribe to ADP’s Eye on Washington (<https://www.adp.com/resources/articles-and-insights/adp-research-institute/research-topics/legislative-updates.aspx>) for updates.

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