EEO-1 Form Revision

Rule Provisions

The Standard Form 100 (EEO-1) must be filed by all private employers with 100 or more employees who are subject to Title VII of the Civil Rights Act of 1964 as amended. This does not include State or local governments, primary and secondary school systems, higher education institutions, Indian tribes, and tax-exempt private membership clubs other than labor organizations.

The form must also be filed by all private employers (also subject to Title VII of the 1964 Civil Rights Act) who have fewer than 100 employees if the company is owned or affiliated with another company, or if there is centralized ownership, control or management (such as central control of personnel policies and labor relations) so that the organization legally constitutes a single enterprise and the enterprise employs a total of 100 or more employees.

All federal contractors who are not exempt as provided for by 41 CFR 60-1.5 and have 50 or more employees, and are prime contractors or first-tier subcontractors and have a contract, subcontract, or purchase order amounting to $50,000 or more. It also applies to federal contractors over 50 employees who serve as a depository of U.S. government funds in any amount or are a financial institution serving as an issuing and paying agent for U.S. Savings Bonds and Notes.

Only those establishments located in the District of Columbia and the 50 states are required to submit an EEO-1 form. No reports should be filed for establishments in Puerto Rico, the Virgin Islands or other American Protectorates.

Why was the EEO-1 report revised?

On Sept. 29, 2016, the EEOC publicly announced these changes to the EEO-1 form in hopes of assisting in investigating whether employers are discriminating on the basis of gender, race or ethnicity.

“Collecting pay data is a significant step forward in addressing discriminatory pay practices,” said EEOC Chair Jenny R. Yang. “This information will assist employers in evaluating their pay practices to prevent pay discrimination and strengthen enforcement of our federal antidiscrimination laws.”

These controversial changes to the EEO-1 form impose significant administrative burdens that WorldatWork’s members will have to shoulder. In the association’s April 2016 letter to the EEOC criticizing their proposed changes to the form, WorldatWork 2016. This issue summary is presented for educational purposes only and is not intended, and should not be relied upon, as legal or accounting advice.
WorldatWork wrote that compensation experts did not believe that the additional disclosures proposed by the commission would “actually assist in identifying and addressing true pay discrepancies.” The association pointed out that four existing federal laws already require employers to ensure pay equity in the American workplace.

WorldatWork concluded that the government did not establish a reasonable need for additional data collection by changing the EEO-1 form. However, the Obama Administration chose to move forward with this rule despite warnings from WorldatWork and others that their modifications are unwarranted and likely ineffective in practice.

What is new on the revised EEO-1 report?

Although private employers have previously reported the sex and race/ethnicity of their employees to the EEOC, now private employers required to file the form also be required to report their employee’s W-2 compensation information and hours worked.

The revised EEO-1 report has two new elements:

Summary pay data. Employers report the total number of full and part-time employees they had during that year in each of 12 pay bands listed for each EEO-1 job category; employers do not report individual pay or salaries.

Aggregate hours worked data. Employers tally and report the number of hours worked that year by all the employees accounted for in each pay band.

Which employers will file the revised EEO-1 report?

Starting with the 2017 report, private employers including federal contractors and subcontractors with 100 or more employees will submit the revised summary pay data. This revision did not impact the 2016 EEO-1 report, which was due on Sept. 30, 2016.

The 2017 report is due on March 31, 2018.

Federal contractors and subcontractors with 50-99 employees will not submit summary pay data but will continue to report demographic data (sex and race or ethnicity) on the EEO-1 as they did before.

Federal contractors and subcontractors with 49 or fewer employees, and companies without federal contracts with 99 or fewer employees, will not be required to complete the EEO-1 report.

Data collected for private employers will go to the EEOC, while data collected for federal contractors and subcontractors will go to the U.S. Dept. of Labor's Office of Federal Contract Compliance Programs (OFCCP).
When will employers count their employees for the revised EEO-1 report?

Employers will count their employees during the “workforce snapshot period.” For reporting years 2016 and before, the “workforce snapshot period” was July 1 to September 30.

Starting with the revised EEO-1 report of 2017 data, the “workforce snapshot period” will be Oct. 1 to Dec. 31, 2017. Each employer may choose any pay period during this three-month “workforce snapshot period” to count its full and part-time employees for the EEO-1 report.

How will data about employees’ sex and race or ethnicity be reported on the revised EEO-1?

After tallying the total number of employees in each pay band by job category, employers will enter this data in the appropriate columns of the EEO-1 report based on the sex and ethnicity or race of the employees. For example, a financial services firm may report that it has 10 Professionals in pay band 6, which is $49,920 – $62,919, who are men and black; and that it also has 35 Professionals in pay band 6 who are men and white.

Why are hours worked being collected? What is the measure of hours worked for the revised EEO-1?

Hours worked data is being collected so that the EEOC and the OFCCP can account for part-time and partial year employment when they analyze EEO-1 pay data.

For the EEO-1, hours worked will be counted by consulting employer records already required under the Fair Labor Standards Act (FLSA):

For non-exempt employees, for whom the FLSA already requires employers to keep records of hours worked, employers will consult these records to identify the number of hours worked.

For employees who are exempt from the FLSA, employers have a choice. They may either:

- Report 20 hours per week for each part-time employee and 40 hours per week for each full-time employee; or
- Report actual number of hours worked by exempt employees, full – or part-time, if they prefer to do so.

How will hours worked be counted on the revised EEO-1 report?

Hours worked data will be reported on the EEO-1 by tallying the total number of hours worked by all the employees counted in each pay band, for the W-2 reporting year.

What are the EEO-1 pay bands?

The EEO-1 pay bands track the 12 pay bands used by the Bureau of Labor Statistics for the Occupation Employment Statistics survey:

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

To identify the pay band on the revised EEO-1 in which to count an employee, employers will rely on the pay reported for income tax purposes that year in Box 1 of the W-2 form. For EEO-1 purposes, these wages will be reported for the same year in which they are reported for W-2 purposes.

Employers will count the number of employees they have in each pay band for each job category. If no employees are in a job category or pay band, employers will leave the cell blank.
Filing the Revised EEO-1 Report

Employers will continue to file their EEO-1 report with the EEO-1 Joint Reporting Committee of the EEOC and/or the OFCCP. Consistent with current reporting practices, employers will submit electronic EEO-1 reports securely via the EEO-1 Online Filing System on the EEOC’s website or utilize that portal to electronically transmit a data file containing the EEO-1 data.

What are the file specifications for data uploads of revised EEO-1 data?

The Joint Reporting Committee announced the file specifications for the revised EEO-1 collection on Sept. 29, 2016. To see these file specifications, please visit: https://www.eeoc.gov/employers/eeo1survey/2017survey.cfm

Is the Joint Reporting Committee and EEOC available to answer questions about the new form?

The Joint Reporting Committee and EEOC staff are available to answer questions from all EEO-1 stakeholders, including employers, payroll, HRIS experts, and software professionals. Individuals may submit questions or request assistance by contacting the EEO-1 Coordinator at: EEOC Survey Division — Room 4SW22G, 131 M Street, N.E. Washington, D.C. 20507, or by email at: eeo1.suggestionbox@eeoc.gov.

The EEO-1 Joint Reporting Committee’s main telephone number is 1-877-392-4647.

The EEOC stated it is committed to helping all EEO-1 filers successfully file their reports. The EEOC has provided resources to address questions on their website, and the agency stated it will provide ongoing technical assistance to aid employers in their compliance efforts.

Confidentiality, Privacy, and Data Security

According to federal regulations, the EEOC is prohibited to release any EEO-1 information and data to the public. To keep this information secure, the EEOC maintains strong security protections with constant reviews and updates to security protocols. The implemented security and privacy controls protect organizational operations and information system assets against a diverse set of threats, including malicious attacks, natural disasters, structural failures, and human error. This high level of network protection is compliant with all federal guidelines in order to safeguard EEO-1 data.

With the purpose of protecting employer confidentiality and employee privacy, the EEOC only publishes EEO-1 data at a large-scale. Employers can use published aggregated data to compare or benchmark their own data with data from other employers in their industry or geographical area.

Internet Resources

The EEOC has provided further guidance about the revision at https://www.eeoc.gov/employers/eeo1survey/2017survey-qanda.cfm.

The EEOC’s main webpage for its EEO-1 form can be found at https://www.eeoc.gov/employers/eeo1survey/.

Practitioner Impact

The new requirements will significantly increase the amount of data needed to be captured and reported, with multi-establishment employers assuming an even greater burden. Although employers have about 18 months between the 2016 filing and the deadline for the 2017 filing in March 2018, employers should start by ensuring that their systems to track the required data are in place well before the deadline.

The new pay categories will report pay data from Box 1 of W-2 earnings, which excludes contributions to qualified retirement and benefit plans. Hours worked data must also be reported. For exempt workers, employers have the option of reporting actual hours worked, if tracked, or to use an estimate of 40 hours per week for each full time worker and 20 hours per week for each part time worker.

It is strongly recommended that you begin to collect and analyze your organization’s data well in advance of the required filing date, working closely with your legal counsel. These additional reporting requirements—if not already in place—should be incorporated into your regular pay audit practices.

Note: All information presented in this WorldatWork Issue Summary is based upon the EEOC Notice, “Revision of the Employer Information Report (EEO-1),” published July 14, 2016, in the Federal Register, and announced by the EEOC on Sept. 29, 2016.

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