

ROBIN'S REVIEW OF EMPLOYMENT NEWS

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EEO-1 COMPONENT 2 PAY DATA REPORTS ARE DUE ON SEPTEMBER 30, 2019: WHAT EMPLOYERS NEED TO KNOW

Private employers who are subject to Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), and have 100 or more employees, or who are subject to Title VII with fewer than 100 employees if the company is owned or affiliated with another company, or there is centralized ownership, control or management (such as central personnel policies and labor relations) so that the group is a single enterprise comprising a total of 100 employees, and certain federal contractors, must submit Component 2 EEO-1 Pay Data information no later than September 30, 2019. For employers not yet familiar with the Component 2 Pay Data Reporting Requirements, the information below should be helpful.

1. Historical Background of EEO-1 Component 2 Pay Data.

Employers with 15 or more employees are subject to Title VII, and must retain records and produce reports as mandated by the Equal Employment Opportunity Commission (“EEOC”) related to whether unlawful employment practices have been or, are being, committed. 42 U.S.C. Sec. 2000e-8(c)(1)-(3). Since 1966, the EEOC has required that employers with 100 or more employees file an Employer Information Report (“EEO-1”). 29 C.F.R. Sec. 1602-7. The EEO-1 requires employers to report the number of workers employed by job category, sex, race and ethnicity. A standard Form 100 was developed for this purpose and are submitted by employers obligated to file such reports. After several years of investigation as to how to improve the enforcement of federal laws prohibiting pay discrimination, in 1996, the EEOC announced its intention to add pay data collection to the EEO-1 report, known as Component 2 Data. EEO-1 Component 2 Pay Data must be submitted by September 30, 2019 via the EEO-1 online filing system or as an electronically transmitted data file.

2. Recent Developments in the Courts.

In September of 2016, the EEOC submitted its Final Supporting Statement to the Office of Management and Budget (“OMB”), which initially approved the proposed collection of pay data. Almost one year later, in August of 2017, the OMB announced its decision to stay the EEOC’s new pay data collection rule so that employers were not obligated to provide Component 2 Data. Recently, a United States District Court for the District of Columbia in *National Women’s Law Center, et al. v. Office of Management and Budget, et al.*, 358 F. Supp.3d 66 (D.D.C. Cir. 2019) vacated the OMB’s stay of the EEOC’s revised EEO-1 Form (that includes the Component 2 Pay Data requirement), which means that employers must now file Form 100 reports to report pay data to meet this requirement.

Component 1 Data (the data currently required of employers) collects information about employees’ ethnicity, race and sex by job category, and was due earlier this year. Component 2 Data collects pay data contained on employees’ yearly W-2 earnings report and the hours worked (for full-time and part-time workers). Under the current state of the law, employers must submit that information in 12 pay bands for each of 10 job categories for the years 2017 and 2018, no later than September 30, 2019. The EEOC has recently opened its portal to allow employers to begin filing reports and uploading data.

3. Information that Must Be Disclosed.

EEO-1 Component 2 Form 100 reports must be filed for calendar years 2017 and 2018. However, a Workforce Snapshot may be used, which takes employment figures from any pay period in October through December in each calendar year. Full time and part-time employees must be counted by sex and race, and ethnicity, for each of the ten occupational categories. Every employee must be accounted for in only one race/ethnicity of the categories listed. Then, the employer must assign the employees to one of 12 pay bands listed for an EEO-1 job category. For employees not exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act (“FLSA”), count the hours worked as recorded during the reporting year. For employees who are exempt from minimum wage and overtime FLSA regulations, the employer may either: (1) report a proxy of 40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees, multiplied by the number of weeks the individuals were employed during the EEO-1 reporting year; or (2) provide actual hours of work by exempt employees if the employer already maintains such records of this information. Additional information for EEO-1 Component 2 compliance can be found in the EEOC Instructions at: <https://eeocomp2.norc.org/assets/documents/Comp2EEO1InstructionBook.pdf>

4. Tips for Compliance.

Employers should begin the process of gathering the information necessary to meet the September 30, 2019 compliance deadline. The EEOC’s website contains the forms necessary, including the list of pay bands and job categories, to complete the task. The EEOC website is located at www.eeoc.gov.

The information contained in this article is not designed to address specific situations, and does not include rules or regulations that apply to all states or cities. If you have questions concerning this topic, you should consult with legal counsel of your choice to obtain advice on various fact specific matters.



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