

[The Resource] What Employers Need to Know About EEO-1 Component 2

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Pursuant to Title VII of the Civil Rights Act of 1964, private employers with 100 or more employees and certain government contractors are required to submit annual EEO-1 Reports to the Equal Employment Opportunity Commission (the “EEOC”). Historically, the EEO-1 Report required employers only to list their employees by race/ethnicity, gender and job category. However, the EEOC has amended its EEO-1 annual filing requirements so that employers must also include compensation data and data regarding hours worked in addition to the data that had been required in the past. Such data for 2017 and 2018 must be filed by covered employers on or before September 30, 2019. This volume of *The Resource* will provide employers with the information they need to comply with the new EEO-1 reporting requirements.

What is the EEO-1 Report and Who Must File?

The EEO-1 Report is a compliance survey mandated by federal statute and regulations that requires certain employers to submit to the EEOC each year employment data relevant to the determinations of whether unlawful employment practices have been or are being committed.

The following employers are generally required to submit an EEO-1 report:

- Private employers that have 100 or more employees;
- Private employers that are owned or corporately affiliated with another company, provided that the entire enterprise employs 100 or more employees in the aggregate; and
- Government contractors that are subject to Executive Order 11246, have 50 or more employees and have a federal government prime contract or first-tier subcontract amounting to \$50,000 or more.

What EEO-1 Requirements Changed and Why?

Since its inception in 1966, the EEO-1 report has required covered employers to file by March 31 of each year information about the race/ethnicity, gender and

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job category of their employees. This information is referred to as “Component 1.” In 2016, the EEOC amended its EEO-1 annual filing requirements so that employers must include compensation data and data regarding hours worked in addition to the data that had been required in the past. These additional requirements are now known as “Component 2.” The EEOC took the position that Component 2 was designed to assist the EEOC in identifying pay discrimination and promoting equal pay practices. Component 2 was to go into effect March 31, 2018 and was to require submission of data from 2017.

Then, in 2017—under the new administration—the White House Office of Management and Budget (the “OMB”) initiated a review and stay of the new EEO-1 form which included Component 2. The OMB stated that it did this so that it could review the appropriateness of the revised form under the Paperwork Reduction Act.

Worker advocacy groups sued to force the EEOC to collect the Component 2 data. They argued that Component 2 would help them and the EEOC identify and evaluate pay disparities. Furthermore, they argued, requiring collection of equal pay data would encourage employers to identify, correct and prevent unlawful pay discrimination. Business groups, on the other hand, have opposed Component 2, arguing that it will exacerbate administrative burdens and will not be effective in addressing discrimination.

Then, on March 4, 2019, in the case *National Women's Law Center v. Office of Management and Budget*, the U.S. District Court for the District of Columbia vacated the Administration’s stay and reinstated the reporting obligation.

On April 3, 2019, the EEOC filed a proposed plan with the court stating that in order for it to be able to collect Component 2 data for 2018, the submission deadline for Component 2 would need to be extended. On April 25, 2019, the Court issued a ruling ordering covered employers to submit the Component 2 data to the EEOC by September 30, 2019. Accordingly, employers must now prepare to submit Component 2 data from 2017 and 2018 by the September 30, 2019 deadline. The online portal for submission of Component 2 data for 2017 and 2018 (<https://eeocomp2.norc.org/>) opened July 15, 2019.

What Data is Needed to Comply with the New Requirements?

The Component 2 reporting requirement is limited to employers—including federal contractors—that have at least 100 employees. Unlike Component 1, Component 2 data is not required of federal contractors with fewer than 100 employees. Covered employers will receive their User ID in a notification letter sent by U.S. mail.

As with Component 1, employers should select a pay period between October 1 and December 31 to use as a “workforce snapshot period.” Only full-time and part-time employees who were on the employer’s payroll during the workforce

snapshot period must be included in the Component 2 data report. Component 2 requires employers to report: (a) wage information from Box 1 of Form W-2, and (b) total hours worked. This information must be categorized by race/ethnicity, sex and job category.

Employee self-identification is the preferred method of identification for the race/ethnicity categories. Employers are required to try to allow employees to self-identify. If any employee declines to do so, the employer may refer to information provided by the employee upon beginning employment or use visual observation.

The job categories used in Component 2 are the same as those on the most recent EEO-1 Component 1 report:

- 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

Twelve compensation bands will be collected within each job category:

- \$19,239 and under
- \$19,240 - \$24,439
- \$24,440 - \$30,679
- \$30,680 - \$38,999
- \$39,000 - \$49,919
- \$49,920 - \$62,919
- \$62,920 - \$80,079
- \$80,080 - \$101,919
- \$101,920 - \$128,959
- \$128,960 - \$163,799
- \$163,800 - \$207,999
- \$208,000 and over

Employers should be aware that gross annual earnings cannot be used in place of W-2 Box 1 earnings. Employers should also be aware that for employees categorized as “non-exempt” from the wage and hour requirements of the Fair Labor Standards Act (FLSA), the reported hours should be the exact hours worked by the employee. For employees categorized as “exempt,” the report should show an estimated 40 hours per week if full-time and 20 hours per week if part-time.

Information to assist employers in filing Component 2 data, including a sample

form, instruction booklet, and FAQ, are available at <https://eeocomp2.norc.org/info>.

What are the Next Steps for Covered Employer?

Covered employers should collect and prepare the Component 2 data as soon as possible. Because this may be the first time an employer has gathered this kind of information, it may take some time to determine where the data is stored and how to extract it.

Once the data is collected, employers must complete the EEO-1 form. This may require significant time and resources; employers might consider using vendors to assist with the process.

Finally, the employers must report the data to the EEOC. This can be done either via the Component 2 online filing system (<https://eeocomp2.norc.org/>) or by creating a data file that meets the applicable file specifications provided at <https://eeocomp2.norc.org/info>. A Component 2 help desk has been established and can be reached at eeocompdata@norc.org and +1 877 324 6214.

Once the data is submitted and certified, a copy of the report should be retained for the employer's records.

Covered employers who have not started to collect and report Component 2 data should do so without delay. Employers should note that certification of the Component 2 report is mandatory. Employers who fail to certify the report will receive a notification of failure to file. Although there are currently no civil penalties or fees associated with a failure to file an EEO-1, the EEOC can seek a court order compelling compliance. In addition, non-compliant federal contractors may face cancellation of their government contracts and possible debarment.