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September 30 EEO-1 New 'Component 2' Data Submission Deadline Is Quickly Approaching

Employers with more than 100 employees have long complied with the requirement of the Equal Employment Opportunity Commission (EEOC) to annually report the number of their employees by gender, race/ethnicity and job category on the EEO-1 Form. In February 2016, the EEOC announced its intention to expand the data it collects to include pay and other data, commonly known as "Component 2" data. Employers breathed a collective sigh of relief in September 2016 when the Office of Management and Budget (OMB) stayed the implementation of Component 2 data collection. After a recent federal court ruling, that data is now due to the EEOC by September 30.

Earlier this year, Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia lifted the OMB's stay and ordered the EEOC to collect two years of EEO-1 Component 2 data from covered employers (those with more than 100 employees). The two years had to include such data from 2018 and, at the EEOC's discretion, either 2017 or 2019. The EEOC elected to collect pay data for 2017. After the EEOC addressed concerns about safeguarding the sensitive information employers were required to provide, the court set the September 30 deadline.

What Information Must Employers Report?

By September 30, covered employers must submit Component 2 data for calendar years 2017 and 2018. Component 2 data includes the total number of full-time and part-time employees in each established race/ethnicity and gender category, in each of 12 pay bands established by the EEOC (based on W-2 Box 1 income), for each EEO-1 job category. Employers are required to report pay data for employees who were employed during a "Workforce Snapshot Period"—an employer-selected pay period between October 1 and December 31.

Employers must also report the aggregate number of hours worked for all the employees in each of the 12 pay bands for each EEO-1 job category. For non-exempt employees, employers must report the total number of hours worked during the calendar year. For exempt employees, employers have two options: (1) report the actual hours worked if they maintain such records; or (2) use a 40-hour workweek proxy for full-time workers and a 20-hour workweek proxy for part-time employees, and multiply that number by the number of weeks the employee was employed during the applicable year.

EEOC Guidance on Reporting Gender Data For Non-Binary Employees

Historically, the EEO-1 Form limited employers' ability to report employees' gender to only "male" or "female," and did not provide any other option such as "other" or "non-binary." This left employers in the difficult position of assigning employees a gender that may not match the one with which they identify. However, the EEOC recently provided some guidance on this issue, stating that employers may (but are not required to) account for non-binary employees by providing the requisite data for such employees in the comment box on the Certification Page (see Frequently Asked Questions link below for information).

The EEOC has designated a special online filing portal for employers to submit Component 2 data. The Component 2 data portal is located at eeoccomp2.norc.org and also contains EEOC guidance to assist employers in preparing their submissions. Such guidance includes, among other things, instructions for submitting the EEO-1 Component 2 data, responses to Frequently Asked Questions, and a fact sheet identifying key deadlines and reminders.

Stay Alert and Be Prepared

September 30 is fast approaching. To the extent they have not done so already, employers should familiarize themselves with the resource documents posted on the EEOC's website, continue gathering the necessary pay data for their EEO-1 Component 2 submission, and seek legal counsel if necessary. Employers should also continue to monitor the EEOC's website for any updates or additional guidance issued prior to the September 30 deadline.

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Authors



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com