
EEO-1 New Pay Data Reporting Requirement—Possible Delay or Suspension?

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This is the time of year when employers with 100 or more employees (and federal contractors with 50 or more employees) would typically be gathering information to complete the EEO-1 reporting by September 30. However, on September 29, 2016, the EEOC announced approval of a revised EEO-1, starting with the 2017 report. The annual filing deadline for the EEO-1 Report has been changed from September 30, 2017 to March 31, 2018. The “workforce snapshot period” has also changed to any payroll period of the employer's choice between October 1 and December 31, 2017 (rather than, as previously, a payroll period between July 1 and September 30).

At the recent National Industry Liaison Group conference in San Antonio, Texas, Victoria Lipnic, acting chair of the EEOC, stated that the White House's Office of Information and Regulatory Affairs (OIRA) is currently reviewing the burdens of the new pay data reporting requirement. Ms. Lipnic stated that she had suggested to OIRA that, at the very least, implementation be delayed so that further review of the burdens can be done. She also asked that OIRA make a decision by the end of August, so employers would have enough time to prepare if the new requirements remain in place as scheduled.

What needs to be collected?

This new EEO-1 Report requires that the following employment data be collected and reported for both full- and part-time employees included in the workforce snapshot:

- Headcount, as previously had been submitted, but now broken down by race/ethnicity and gender categories within 12 pay bands within each EEO-1 job group based on individual 2017 W-2, Box 1 wage data
- Totals of all hours worked (FLSA definition of hours worked) for employees within each pay band within each job group by race/ethnicity and gender

There has been much controversy regarding the data collection and reporting burden on employers for these expanded reporting requirements, with many expressing concern that no meaningful data will be produced while the requirements add a significant data collection burden to all companies

required to submit reporting. There has been considerable lobbying from employers and employer associations in support of suspension or cancellation of the new mandate requiring submission of pay data and work hours information in this format. At the time of this writing, there has been no update from either the EEOC or the White House.

What should you be doing now?

While there is a chance that the new reporting requirements will at least be suspended pending further review, each employer should be prepared to provide the information should there be no suspension or cancellation. For now, in the interest of not expending unnecessary time and resources, we recommend that employers consider the following activities:

- Review the assignment of EEO-1 job group for all job titles to ensure all positions are reported in the appropriate categories. This is an important exercise to conduct, even if the new reporting requirements do not go through, particularly for federal contractors. EEO-1s are used to identify federal contractor compliance review targets, so it is important that assignments are made thoughtfully. And if the new requirements remain in place, this will become even more important.
- Understand the data components of W-2, Box 1 earnings and hours worked for each employee for the new reporting requirements, and reach out to the departments within your organization—such as HRIS, finance, payroll—that would be collecting the information to determine what data reporting/systems would need to be put in place to produce the required information, and the amount of time that would be needed to prepare it for reporting.

Stay tuned—hopefully we will have good news at the end of August.

For Federal Contractors Only

VETS-4212 for 2017

There have been no changes to the VETS-4212 Report filing requirements or time frame for 2017. Federal contractors and subcontractors with a contract or subcontract in the amount of \$150,000 or more with any department or agency of the United States government for procurement of personal property or nonpersonal services, must file a VETS-4212 Report by September 30, 2017, using a workforce snapshot period, which can be any payroll period between July 1 and August 31, 2017, selected by the federal contractor (just as in previous years).

VETS-4212 for 2018

If the new EEO-1 mandate goes into effect, federal contractors submitting the 2018 VETS-4212 Report may use the payroll period selected for the March 31, 2018, EEO-1 submission (if using the last pay period of the year). The 2018 VETS-4212 Report must be filed between August 1 and September 30, 2018, unless a change in reporting time frame is made in the future by the Department of Labor, Veterans' Employment and Training Service.

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