

# Insight

## IN-DEPTH DISCUSSION

JULY 31, 2017

### Revised EEO-1 Report – Where Does it Stand?

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In the cycle of seasons, July is when an employer's thoughts turn to the filing of its annual EEO-1 reports. Since 1966,<sup>1</sup> employers with 100 or more employees that are subject to Title VII have been required to annually file this report, providing the Equal Employment Opportunity Commission (the "EEOC") with data on the number of individuals employed, their distribution by legal entity and location, and their demographic characteristics. In addition, federal contractors with 50 or more employees are also required to file an annual EEO-1 report. For decades, employers have been required to file the EEO-1 report each year by September 30 with data based on a "snapshot" of their workforce taken sometime between July and September. But not this year.

No EEO-1 filing is required, or even possible, this fall.

As part of the Obama administration's interest in addressing the persistent gap in pay between women and men and minorities and non-minorities, the EEOC and the Office of Federal Contract Compliance Programs ("OFCCP") considered several options over a period of years for requiring employers to report on employee compensation. However, creating a reporting tool that would not be unreasonably burdensome, would provide the agencies with meaningful data, and would protect the confidentiality of employer data and workers' privacy, proved difficult. The [solution](#) that was finally adopted by the EEOC and OFCCP – over strenuously asserted employer concerns – involved additions to the EEO-1 Report and changes in the EEO-1 reporting cycle.

The revised EEO-1 report (*see Appendix 1*) now requires employers to provide information on employee compensation and hours worked in addition to demographic information.

No report is required in the fall of 2017. The next required report will have to be filed by March 31, 2018, based on a workforce "snapshot" taken between October and December of 2017. The new report will require employers to provide information on the compensation paid to the

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<sup>1</sup> See EEOC, *Early Enforcement Efforts*, [https://www.eeoc.gov/eeoc/history/35th/1965-71/early\\_enforcement.html](https://www.eeoc.gov/eeoc/history/35th/1965-71/early_enforcement.html)

employees included in the snapshot and their hours worked. Compensation is to be reported based on the pay reported by the employer in Box 1 of the employees' 2017 W-2 forms.

## Controversy and Confusion

Employer reaction to the new EEO-1 report has been almost uniformly negative. The report will be difficult to complete and, particularly for larger employers, will require substantial investments in personnel and software in order to be able to efficiently address the requirements. At the same time, there is substantial uncertainty as to whether the collected data can be productively and effectively used by the EEOC or OFCCP. The broad nature of the data that employers must now provide and the absence of other data that might legitimately explain pay differences make any analysis of the new EEO-1 questionable. In other words, the new report imposes substantial burdens on employers without clearly advancing the goal of pay equity.

The many concerns raised with regard to the new reporting requirements were reflected in the EEOC's narrow approval of the new form by a 3-2 vote along party lines. In addition, Republicans in Congress have also expressed concerns regarding the new requirements. Therefore, given the results of the November election, there was substantial speculation that the new requirements would be overturned. That speculation appeared to be well grounded when, in February 2017, acting EEOC Chair, Victoria Lipnic, publically expressed interest in reconsidering the new requirements.

Thus faced with substantial compliance costs and a reasonable possibility that the new reporting requirements might be abandoned, many employers have held off on preparations to satisfy the new reporting requirements.

Unfortunately, since February 2017, uncertainty regarding EEO-1 reporting requirements has only increased. While the Republican EEOC Commissioners will likely remain interested in addressing the problems associated with the new EEO-1 report, there is also interest in the White House and within the EEOC in continuing to address issues of importance to women. Accordingly, it appears that a simple reversion to the old EEO-1 report is less likely to occur except as part of some new initiative to address pay inequities. As there are significant challenges to designing such initiatives, particularly in the limited time remaining before the new EEO-1 report must be prepared, it is far from clear what will happen.

Although it should be noted that there have also been several proposals raised in Congress to deny the EEOC and OFCCP funds to use in conducting a 2018 EEO-1 survey, the likelihood of such a proposal becoming law appears, at least for now, to be a long shot.

## The Bottom Line

First, although it may be some time before employers know whether and what they will be required to file in 2018, it is clear that no EEO-1 reporting is required in September of 2017. Employers should not be pulling data to prepare such a report and should not attempt to file a fall 2017 EEO-1 report.

In the face of continuing uncertainty regarding the revised report, conservative employers, at this point, may want to begin preparations to comply with the new requirements. Employers that are more tolerant of risk, on the other hand, may want to continue to take a wait-and-see approach, understanding, however, that they may then have difficulty filing a complete and timely report in the event the new requirements remain in place.

Second, federal contractors that are subject to the Vietnam Era Veterans Readjustment Assistance Act are required to also file a VETS 4212 report in addition to an EEO-1 report. The VETS 4212 report provides data on the number of veterans in the employer's workforce. The requirements relating to the VETS 4212 report are unchanged. Therefore, contractors that are required to file VETS 4212 reports should be preparing those reports and filing them by September 30, 2017.

# APPENDIX 1

This is the proposed EEO-1 Form to collect pay data.

## SECTION A - TYPE OF REPORT

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX).

Single-establishment Employer Report

Multi-establishment Employer:

Consolidated Report (Required)

Headquarters Unit Report (Required)

Individual Establishment Report (submit one for each establishment with 50 or more employees)

Special Report

2. Total number of reports being filed by this Company (Answer on Consolidated Report only):

## SECTION B - COMPANY IDENTIFICATION

1. Name of parent company that owns or controls establishment in item 2 (omit if same as above).

a. Parent Company:

Address (Number and Street):

City or Town:

State:

ZIP code:

2. Establishment for which this report is filed (omit if same as above)

a. Name of Establishment:

Address (Number and Street):

City or Town:

County:

State:

ZIP code:

b. Employer identification No. (IRS 9-DIGIT TAX NUMBER):

c. Was an EEO-1 report filed for this establishment last year?

Yes  No

## SECTION C - EMPLOYERS WHO ARE REQUIRED TO FILE

1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?

Yes  No

2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more?

Yes  No

3. Does the company or any of its establishments (a) have 50 or more employees AND (b) is not exempt as provided by 41 CFR 60-1.5, AND either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order amounting to \$50,000 or more, or (2) serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes?

Yes  No

4. If the response to the above question (C - 3) is Yes, please enter your Dun and Bradstreet identification number (if you have one):

**NOTE: If an answer to questions 1, 2 or 3 of Section C is "Yes", complete the entire form, otherwise skip to Section G.**

This is the proposed EEO-1 Form to collect pay data.

**SECTION D - EMPLOYMENT DATA**

Employment at this establishment - Report all permanent full- and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Job Categories	Annual Salary in Thousands	Number of Employees (Report employees in only one category)														Total Col A-N
		Race/Ethnicity														
		Hispanic or Latino		Non-Hispanic or Latino												
				Male						Female						
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		
Executive/Senior Level Officials and Managers 1.1	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															
First/ Mid-Level Officials and Managers 1.2	13. \$19,239 and under															
	14. \$19,240 - \$24,439															
	15. \$24,440 - \$30,679															
	16. \$30,680 - \$38,999															
	17. \$39,000 - \$49,919															
	18. \$49,920 - \$62,919															
	19. \$62,920 - \$80,079															
	20. \$80,080 - \$101,919															
	21. \$101,920 - \$128,959															
	22. \$128,960 - \$163,799															
	23. \$163,800 - \$207,999															
	24. \$208,000 and over															
Professionals 2	25. \$19,239 and under															
	26. \$19,240 - \$24,439															
	27. \$24,440 - \$30,679															
	28. \$30,680 - \$38,999															
	29. \$39,000 - \$49,919															
	30. \$49,920 - \$62,919															
	31. \$62,920 - \$80,079															
	32. \$80,080 - \$101,919															
	33. \$101,920 - \$128,959															
	34. \$128,960 - \$163,799															
	35. \$163,800 - \$207,999															
	36. \$208,000 and over															

SAMPLE



Operatives 7	85. \$19,239 and under																			
	86. \$19,240 - \$24,439																			
	87. \$24,440 - \$30,679																			
	88. \$30,680 - \$38,999																			
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Laborers and Helpers 8	97. \$19,239 and under																			
	98. \$19,240 - \$24,439																			
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Total 121.																				
Previous Year Total 122.																				

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Employment at this establishment - Report all permanent full- and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Job Categories	Annual Salary in Thousands	For each cell provide the <u>TOTAL Number of Hours</u> worked in last year														Total Col A-N
		Race/Ethnicity														
		Hispanic or Latino		Non/Hispanic or Latino												
				Male						Female						
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	
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SAMPLE

Date(s) of payroll period used: (Omit on the Consolidated Report)

Empty text box for payroll period date.

**SECTION E - ESTABLISHMENT INFORMATION**  
(Omit on the Consolidated Report)

What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.)

Large empty text box for describing the major activity of the establishment.

**SECTION F - REMARKS**

Use this item to give any identification data appearing on the last EE0-1 report which differs from that given above, explain major changes in composition of reporting units and other pertinent information.

Large empty text box for providing remarks and identification data.

**SECTION G - CERTIFICATION**

**SAMPLE**

Check One: <input type="checkbox"/> 1. All reports are accurate and were prepared in accordance with the instructions. (Check only on consolidated report only.) <input type="checkbox"/> 2. This report is accurate and was prepared in accordance with the instructions.			
Name of Certifying Official	Title	Signature	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Name of Person to contact regarding this report	Title	Address (Number and Street)	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
City and State	Zip Code	Email Address	Telephone No. (including Area code and Extension)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII.  
WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001