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It's time again for the annual EEO-1 filing. But, beware! The misleading EEO-1 website can force some companies to be wrongly characterized as "government contractors" subject to OFCCP audits.

Beware Misleading and Overbroad EEO-1 Filing Requirements

By *George E. Chaffey*

The Threat.

When submitting EEO-1 forms to the EEOC, each filing company must indicate whether it is a "government contractor." 29 C.F.R. §1602.7. The OFCCP has later used these forms to target identified "government contractors" for audit. However, a company is *not* a "government contractor" just because it is owned by, or affiliated with, another company. *Ernst-Theodore Arndt*, 52 Comp. Gen. 145 (9/21/72). Nevertheless, the EEO-1 website tries to force all parent and subsidiary entities to file as if they were one single company. The EEO-1 website (maintained by EEOC) states that if a company is "owned" by another company, it cannot file an EEO-1 form on its own. As a result, *all* of the separate companies in this resulting imaginary "single" company, being considered just parts of one company, can be tagged as "government contractors" in the EEO-1 database if any of the companies is a government contractor. While such companies can later try to argue their way out of an OFCCP audit by proving that they do not have government contracts, this potentially expensive process unnecessarily puts such companies under OFCCP scrutiny.

The Problem.

The problem is that once a group of affiliated companies are in the EEO-1 system as a "single company", EEOC staff will not allow the separate companies to file separately, and it's often not worth the cost to legally force EEOC to allow them to do so.

The Solution?

Each separate company generally should have the right to file its own EEO-1 forms separately if it chooses, and it should not assume it must file together with other affiliated companies just because the web site says so. Because the website misstates the law and limits how one can respond, the truthful answers that allow a company to properly file separately are not obvious. It is easiest to avoid the problem by carefully filing separately the first time, and doing so by accurately answering the website questions with the assistance of counsel familiar with the EEO-1 regulations and instructions. However, companies that are already merged into an imaginary "single company" in the EEO-1 database face a greater challenge, and they should discuss alternatives with counsel.

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