

Labor and Employment

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# AALRR Alert



## EEOC ADOPTS REVISED EEO-1 REPORT REQUIRING DISCLOSURE OF PAY DATA FOR ENTIRE WORKFORCE

Casandra P. Secord  
Cerritos  
562.653.3200  
csecord@aalrr.com

Jonathan Judge  
Cerritos  
562.653.3200  
jjudge@aalrr.com

On September 29, 2016, the Equal Employment Opportunity Commission (“EEOC”), which is the agency in charge of enforcing federal prohibitions on employment discrimination, adopted its final revisions to the EEO-1. The revised EEO-1 comes after a lengthy deliberative process, which consisted of publishing two versions of the proposed EEO-1 for public comment and holding a public hearing. The revised EEO-1 is intended to address pay discrimination and improve government enforcement efforts by requiring employers with 100 or more employees to report summary pay data for their entire workforce.

### 1. Who must comply with the revised EEO-1 reporting?

Private employers, including federal contractors and subcontractors, with 100 or more employees are required to report summary pay data on the revised EEO-1 report. Federal contractors and subcontractors with 50-99 employees are not required to report summary pay data, but must continue to provide data regarding the gender, ethnicity and race of

their employees by job category. Employers with less than 100 employees and federal contractors and subcontractors with less than 50 employees are not required to complete the EEO-1 report.

### 2. What additional information must be included in the revised EEO-1 report?

The revised EEO-1 will require employers to report W-2 earnings data and total hours worked in twelve pay bands for each of the ten job categories and fourteen gender, race and ethnicity categories. Employers must refer to the earnings reported in Box 1 of W-2 forms to select the appropriate pay band. Employers do not report individual pay or salaries or any personally identifiable information.

Aggregate hours worked will be counted by reviewing time records for non-exempt employees. For exempt employees, employers have the option to use 40 hours per week for full-time employees and 20 hours per week for part-time employees, or report the number of actual hours worked.

Employers will count their employees during the workforce “snapshot” period. The “snapshot” period will be from October 1 to December 31. Employers may choose any pay period during this three-month “snapshot” period to count its full and part-time employees for the revised EEO-1 report.

### 3. When are employers required to use the revised EEO-1 report?

The EEOC extended the deadline for the 2017 EEO-1 report, which will require summary pay data, from September 30, 2017 to March 31, 2018. The EEO-1 report will be due each year thereafter on March 31. The EEOC claims that this due date will allow employers to collect W-2 earnings data once a year for both tax and EEO-1 reporting purposes.

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#### **4. Are resources available to assist employers with the revised EEO-1 report?**

The EEOC posted materials on its website that provide guidance to employers regarding the revised EEO-1 report, including the EEOC's Revised EEO-1 Instruction Booklet, Small Business Fact Sheet, and Questions and Answers. The EEOC will also offer free webinars for employers on October 20 and October 26, 2016. For more information, please refer to the EEOC's website at <https://www.eeoc.gov/employers/eeo1survey/2017survey.cfm>.

#### **5. What should employers do to prepare for the revised EEO-1 report?**

Thoughtful planning and preparation will be necessary for employers to meet the revised EEO-1 reporting requirements and reduce the risk of pay discrimination claims down the road. The collection of summary pay data alone will be a time-consuming and costly endeavor for larger employers to undertake. As such, it is recommended that employers begin the process of evaluating their current data systems to determine how the information can be collected in the most economical fashion.

Employers should also be aware that pay data in EEO-1 reports could be discoverable and used against employers in future litigation proceedings. Because pay discrimination claims are prone to

collective actions and have garnered an increasing amount of attention on both a national and state level, including with the recent passage of the nation's most stringent equal pay law in California, it is recommended that employers plan ahead by conducting a payroll audit to determine if wage disparities exist among gender, race and ethnicity. If wage disparities exist, it will be critical for employers to evaluate the reasons for the disparities in pay and make any necessary corrections before the information is disclosed in EEO-1 reports. Employers may consider hiring an attorney to manage and direct the audit under the attorney-client privilege to reduce the likelihood that the audit will be discovered in litigation.

As Confucius wisely stated, "a man who does not plan long ahead will find trouble right at his door." The saying aptly applies to the revised EEO-1 reporting requirements. AALRR's attorneys are available to assist if you have any questions.