

EEOC PUBLISHES MUCH ANTICIPATED EEO-1 COMPONENT 2 GUIDANCE IN ADVANCE OF EMPLOYERS' SEPTEMBER 30TH FILING DEADLINE

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On July 1, 2019, the Equal Employment Opportunity Commission (“EEOC”) published its much anticipated guidance on the collection and submission of Component 2 data of the EEO-1 report. As a reminder, covered employers are required to submit Component 2 data (which covers certain pay data and hours worked data) for report years 2017 and 2018 by September 30, 2019. The EEOC intends to use Component 2 data to identify potentially unlawful pay disparities based on race/ethnicity and sex.

The guidance, which is published on the EEOC’s web-based portal, includes a variety of information, including a sample EEO-1 Component 2 report form, a Fact Sheet, and a Frequently Asked Questions section (“FAQ”).

Much of the new guidance aligns with that which the EEOC published in 2016, before the White House’s Office and Management and Budget stayed the collection of Component 2 data in August 2017. Below are a few important highlights from the new guidance:

- Workforce Snapshot Period
 - Employers need only submit Component 2 data for employees employed during the “workforce snapshot period” for each of the relevant reporting years.
 - The “workforce snapshot period” is an employer-selected pay period between October 1 and December 31 of the reporting year.
 - The “workforce snapshot period” does not need to be the same for 2017 and 2018, nor does it need to align with the pay period used for submitting Component 1 data.

- Pay Data

- Employers will submit Component 2's pay data by identifying the number of employees (based on a combination of race and sex) that fall within each of 12 compensation bands for each EEO-1 job category. No individual employee pay data will be submitted.
- To identify the compensation band in which to count an employee, employers must use Box 1 of Form W-2. Employers may not use gross annual earnings instead of Form W-2's Box 1 earnings.

- Hours Worked Data
 - Employers will submit Component 2's hours worked data by identifying the total number of hours worked by employees (based on a combination of race and sex) within the same compensation band and job category.
 - The definition of "hours worked" is the same as that used in the federal Fair Labor Standards Act, so employers should not include paid leave time (i.e. sick leave, vacation leave, holidays, PTO, etc.) in calculating Component 2 data.
 - While employers must report actual hours worked for non-exempt employees, they may report either actual hours worked or proxy hours for exempt employees. Employers may use a combination of actual hours worked for some exempt employees and proxy hours for other exempt employees.

- Online Reporting
 - Employers must submit Component 2 data through the EEOC's online filing system or by creating a data file and inputting the appropriate data fields in accordance with the EEOC's [data file specifications](#).
 - The EEOC's online filing system is now available on the agency's web-based portal and will remain open until the September 30th filing deadline. If they have not already, employers should receive login information for the system later this week. The secure file upload function and validation process is expected to be available by mid-August 2019.
 - Employers will be unable to access their 2017 and 2018 Component 1 reports in the Component 2 online filing system.

The Component 2 collection process may take more time and be more difficult than expected, so if they have not already done so, employers should begin the process immediately, including:

- Determining whether their organization must report Component 2 data.
- Identifying the appropriate workforce snapshot periods.
- Establishing a clear process of locating, collecting, and verifying Component 2 data.
- Determining the filing method most appropriate for their organization.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers review and comply with EEO-1 reporting obligations. If you or your organization would like more information or assistance in preparing EEO-1 reports, please contact an attorney in the Labor and Employment practice group or your regular Bryan Cave Leighton Paisner LLP contact.

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