

# EMPLOYMENT LAW CLIENT ALERT

## September 30<sup>th</sup> Wage Reporting Deadline Fast Approaching

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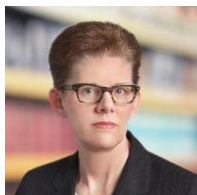
The EEOC's September 30<sup>th</sup> deadline for all covered employers to submit pay data for 2017 and 2018 wage data is right around the corner. While some employers may have implemented data collection tools intended to meet this requirement when a revised EEO-1 report was released in October 2016, others delayed implementation after use of the revised EEO-1 report was halted and litigation ensued over the revised EEO-1 report. A court order issued earlier this year reinstated the filing requirement for all covered employers.

Covered employers are those private employers who had 100 or more employees in a self-selected "snapshot period" between October 1st and December 31st of 2017 and who had 100 or more employees in a self-selected "snapshot period" between October 1st and December 31st of 2018. The self-selected "snapshot period" can be different periods for each year and can also be a different period than what was selected for the "snapshot period" for the EEO-1 Component 1 report (employee counts by race and ethnicity groups by gender and job category). Notably, federal contractors and subcontractors with 50 to 99 employees who are required to file annually EEO-1 Component 1 data are not required to file the Component 2 wage data.

The EEOC has a website on this topic, <https://eeocomp2.norc.org/Index>, and the Users Guide at the More Information tab provides detailed information on the required data and how it is reported. In summary, the EEO-1 Component 2 report contains compensation bands. After tallying the total number of employees in each compensation band by job category, covered employers enter the data is entered in the appropriate columns of the EEO-1 report based on employees' sex and ethnicity or race. The measure of pay is taken from "Box 1 – Wages, tips, other compensation" of IRS Form W-2 of employees in the snapshot period. The job categories and ethnicity/race categories are the same categories used to report Component 1 data.

The Component 2 EEO-1 report contains a second matrix to report hours-worked data. The hours worked during the year by all the employees counted in the cells on the summary compensation data matrix should be totaled and recorded in the corresponding cell on the hours-worked matrix. For exempt workers, covered employers have the option of reporting actual hours worked, if that information is tracked, or a proxy of 40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees, multiplied by the number of weeks the employees were employed during the reporting year. For non-exempt employees, actual hours worked data should be available since it is tracked for wage and hour compliance.

Employers who do not file the EEO-1 Report can expect to receive a notification of failure to file letter from the EEOC. While the EEOC (and OFCCP in regard to federal contractors) can apply to a U.S. District Court for an order compelling the employer to file the EEO-1 Report, due to staffing shortages and allocation of enforcement resources to higher priorities, the likelihood that an application will be filed to compel filing is probably minimal. Practically, however, failing to file an EEO-1 Report (Component 1 or Component 2) can damage an employer's credibility in an EEOC investigation of a charge (and perhaps taken as an indication of the employer's attitude toward non-discrimination) or an audit by OFCCP. Moreover, for federal contractors, failing to maintain and file EEO-1 Reports for the last 3 years is a technical violation of OCCP's rules and will likely trigger a Conciliation Agreement, which may increase the chance of a future compliance audit.



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