

## Show Me the Money: EEO-1 Pay Data Reporting Requirements and Conducting Pay Equity Audits



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## Joining You Today



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## Agenda

- What is the EEO-1 Report?
- Who Needs to File an EEO-1 Report?
- What data is required by Component 1 and Component 2?
- Walk Through of Key Dates
- How to a File EEO-1 Report?
- What Happens If I Fail to Comply?
- Why is the EEOC Requiring This Additional Reporting
- What is a Pay Equity Audit?
- Questions

# EEO-1 Report: A Refresher

## What is the EEO-1 Report?

The EEO-1 Report is a compliance survey mandated by federal statute and regulations. The survey requires companies' employment data to be categorized by race/ethnicity, gender and job category. The EEOC and the Office of Federal Contract Compliance Programs (OFCCP) use the EEO-1 Report to collect data from private employers and government contractors about their women and minority workforce. The agencies also use the EEO-1 Report data to support civil rights enforcement and to analyze employment patterns such as representation of women and minorities within companies, industries or regions.

# Q<sub>1</sub>

## Who Needs to File?

## Who Needs to File?

- **Component 1 Only:**
  - Federal contractors with 50 to 99 employees and a contract of \$50,000 or more
- **Component 1 & 2:**
  - Employers with 100+ employees

## What is an Employee?

- Employee
  - "Employee" means any individual on the payroll of an employer who is an employee for purposes of the employers withholding of Social Security taxes except insurance sales agents who are considered to be employees for such purposes solely because of the provisions of 26 USC 3121 (d)(3)(B) (the Internal Revenue Code). Leased employees are included in this definition.
- Leased Employee
  - "Leased Employee", for EEO-1 reporting only, means a permanent employee provided by an employment agency for a fee to an outside company for which the employment agency handles all personnel tasks including payroll, staffing, benefit payments and compliance reporting. The employment agency shall include leased employees in its EEO-1 report.

## How Do You Count the Number of Employees an Employer has?

- Coverage
  - Usually, a worker can be counted as an “employee” if s/he has worked for the employer for at least twenty calendar weeks (in this year or last). That means some part-time workers can be covered as employees to show the employer is covered by the laws we enforce.
- Coverage for Employers with Several Worksites
  - In some cases, if the employer has more than one worksite, employees at each of the worksites can be counted together. For example, if an employer operates four different restaurants, it may be possible to count employees at all of the restaurants together.

## Q<sub>2</sub>

What data is required by Component 1 and Component 2?

## Revised EEO-1 Report- Two Components

- **Component 1:**
  - Current EEO-1
  - Counts of employees by race/ethnicity and sex in each of ten job categories
- **Component 2:**
  - Aggregated compensation data and hours
  - Organized by 10 EEO-1 job categories
  - 12 specified pay bands
  - Hours worked and pay information from employees' W-2 forms by race, ethnicity and sex

## What is “New” in Component 2 of the Revised EEO-1 Report?

- **Reporting of Compensation in 12 Pay Bands:**
  - Based on W-2 Wages
  - By EEO-1 Category
- **Reporting “Hours Worked” Must Show:**
  - Nonexempt employees
    - Actual hours worked
  - Part-time exempt employees
    - An estimated 20 hours per week
  - Full-time exempt employees
    - 40 hours per week
  - Based on the Fair Labor Standards Act Definition
  - By EEO-1 Category

Select a payroll period between October 1 and December 31. Report year end wages and hours for only those employees who were on the payroll period.

## Walk Through Key Dates

### Key Background Dates

<b>1/29/2016:</b> Under Obama administration, the revised EEO-1 Proposal announced to collect pay and hours data	<b>4/1/2016:</b> Interested parties submit comments to EEOC
<b>2/1/2016:</b> Proposed revisions published in Federal Register	<b>07/14/2016:</b> EEOC submits proposal to White House Office of Management and Budget (OMB)
<b>3/16/2016:</b> EEOC holds public hearing.	<b>8/2016:</b> Interested parties submit comments to OMB

## Key Background Dates

<b>09/2016:</b>	<b>11/15/2017:</b>
OMB approves EEOC's proposal, despite strong opposition	The National Women's Law Center and other pay equity advocates filed suits against OMB and EEOC to reinstate the revised EEO-1 Report
<b>01/20/2017:</b>	<b>03/4/2019:</b>
Trump administration takes office	Court reinstates the revised EEO-1 Report
<b>08/29/2017:</b>	<b>03/18/2019:</b>
OMB stays "Component 2" of the Revised EEO-1 Report based on a requests for reconsideration	EEOC announces Component 1 data is due on 5/31/2019 and is "working diligently" on next steps related to Component 2 data

## Key Background Dates

<b>03/19/2019:</b>	<b>4/16/2019:</b>
Court holds status conference; requests proposed timelines from parties	Court holds evidentiary hearing regarding EEOC's capabilities for collecting EEO-1 data. The EEOC's chief data offer testifies on behalf of EEOC
<b>04/03/2019:</b>	<b>04/25/2019:</b>
Defendants submit proposed timeline to collect 2018 pay data by Sept. 30; brief filed outlining employer concerns	Court issues an oral ruling requiring EEOC to collect Component 2 data for 2017 and 2018 by 09/30/2019



## Key Background Dates

05/3/2019:	09/30/2019:
U.S. Dept. of Justice filed a notice of appeal but advised the Court that the appeal would not impact filing deadlines	2017 and 2018 Component 2 Revised EEO-1 Report due
05/31/2019:	4/5/2021:
2018 Component 1 EEO-1 Report Due	The overall pay data collection requirement set to expire

## Reporting Timeline

- **Definitive Dates:**
  - 2018 Component 1, due by 5/31/19
  - 2018 Component 1, two-week extensions due 6/14/19
  - 2017 Component 2, due by 9/30/19
  - 2018 Component 2, due by 9/30/19
- **Anticipated Dates:**
  - The EEOC's Help Desk to be fully operational approximately by June 17, 2019
  - Component 2 portal expected to be available to employers around 7/15/19

# Q<sub>3</sub>

## How to a File EEO-1 Report?

## How to File EEO-1?

All **single-establishment** employers, (employers doing business at only one establishment in one location), must complete a single EEO-1 online data record.

All **multi-establishment** employers, (employers doing business at more than one establishment), must complete online:

1. a report covering the principal or headquarters office;
2. a separate report for each establishment employing 50 or more persons;
3. a consolidated report that **MUST** include ALL employees by race, sex and job category in establishments with 50 or more employees as well as establishments with fewer than 50 employees; and
4. a list, showing the name, address, total employment and major activity for each establishment employing fewer than 50 persons, must accompany the consolidated report.

## How to File EEO-1? Cont.

- The total number of employees indicated on the headquarters report, PLUS the establishment reports, PLUS the list of establishments with fewer than 50 employees, MUST equal the total number of employees shown on the consolidated report
- Employment data for multi-establishment companies, including parent corporations and their subsidiary holdings, must report all employees working at each company establishment or subsidiary establishment. For the purposes of this report, the term Parent Corporation refers to any corporation which owns all or the majority stock of another corporation so that the latter relates to it as a subsidiary.

## Proposed EEO-1 Form

**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												Two or More races		
		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 Officers and Managers 1.1	1. \$10,239 and under																	
	2. \$10,240 - \$24,439																	
	3. \$24,440 - \$30,679																	
	4. \$30,680 - \$39,999																	
	5. \$39,000 - \$49,919																	
	6. \$49,920 - \$62,919																	
	7. \$62,920 - \$80,079																	
	8. \$80,080 - \$101,319																	
	9. \$101,320 - \$128,959																	
	10. \$128,960 - \$163,799																	
	11. \$163,800 - \$207,999																	
	12. \$208,000 and over																	
First Mid-Level Officers and Managers 1.2	13. \$10,239 and under																	
	14. \$10,240 - \$24,439																	
	15. \$24,440 - \$30,679																	
	16. \$30,680 - \$39,999																	
	17. \$39,000 - \$49,919																	
	18. \$49,920 - \$62,919																	
	19. \$62,920 - \$80,079																	
	20. \$80,080 - \$101,319																	
	21. \$101,320 - \$128,959																	
	22. \$128,960 - \$163,799																	
	23. \$163,800 - \$207,999																	
	24. \$208,000 and over																	

SAMPLE

## Overview of Process

### Understand Data Needs & Sources

- Determine what functions, resources, and budgets are needed
- Identify specific data requirements as applied to the organizations
- What systems host the necessary data?

### Discuss with HR and Payroll Vendors

- Many are trying to develop reporting tools
- Unique challenges as a result of retroactive filing requirements and compressed time frame

### Internal Reporting Processes

- Identify employees on payroll period
- Extract demographic, employee counts “FLSA Hours Worked Data”, and W-2 pay data for employees on selected period

## Overview of Process cont.

### Consolidate & Incorporate Additional Data

- Integrate demographic, employee counts “FLSA Hours Worked,” and W-2 data with establishment data and EEO-1 category assignments
- Consolidate in Revised EEO-1 format, including organization by EEO-1

### Upload the EEO-1 Reports

- Batch Filing
- Manual Filing

### Certify

- Review the filed reports and certify that they are correct

# Q<sub>4</sub>

## What Happens If I Fail to Comply?

## Penalties for Non-Compliance

- **§1602.8 Penalty for making of willfully false statements on report.**
  - The making of willfully false statements on Report EEO-1 is a violation of the United States Code, Title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.
- **§1602.9 Commissions remedy for employers failure to file report.**
  - Any employer failing or refusing to file Report EEO-1 when required to do so may be compelled to file by order of a U.S. District Court, upon application of the Commission.

# Q<sub>5</sub>

## Why is the EEOC Requiring This Additional Reporting?

## How the EEOC Hopes These Changes Will Help Close the Gender Pay Gap

Strengthen the penalties for employers that discriminate in pay

End the practice of pay secrecy in workplaces

Bar retaliation against employees who discuss their salaries with others

## #MeToo Movement Places Spotlight on Gender Wage Gap



- #MeToo is becoming #PayMeToo highlighting pay inequality
- State laws are making it easier for employees to pursue equal pay claims

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## The Fight for Equal Pay:

- In 2017, median annual earnings in **the U.S.** for men were \$52,146 compared to \$41,977 for women—an **earning ratio of just 80%** according to the most recent census data. The gap is worse for women of color and working mothers.



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## **Salary History Ban:**

- The practice of using salary history in the hiring process can have major repercussions in perpetuating the pay gap many women and people of color face in their careers.
- Relying on salary history to set future salary assumes that prior salaries were fairly established in the first place.
- Beginning in 2016, many states and localities began regulating the use of salary history in the hiring process.

## **Governor Gretchen Whitmer sets “Equal Pay” Rules in State Hiring to Help Close Wage Gap**

- Governor Whitmer’s Executive Directive bans state departments and agencies from asking about a job applicant’s salary before an employment offer is made.
- Governor Whitmer’s Executive Directive also bans state agencies from asking an applicant’s current or past employers about the candidate’s salary history or searching for it in public records.
- Governor Whitmer wants the state of Michigan to “be a model of equal opportunity” for employers across the state.



## Presidential Candidate Kamala Harris plan to solve the gender wage gap:

- Employers would be fined 1% of their profit for every 1% wage gap that they allow to exist in their ranks.
- Employers would be required to report the percentage of women in leadership positions and the percentage of women who are their top earners.
- Federal contractors would need to prove equal pay certification in order to bid for contracts over \$500,000.

## What is “Comparable Worth”?

- The doctrine of “Comparable worth” is an attempt to remedy the inequities of pay which result from a long history of sex-segregated jobs and different pay scales for “female” and “male” jobs. Market rates in this view, reflect past discriminatory practices.
- “Comparable Worth” looks at the skills and responsibilities of different jobs, and attempts to correlate compensation to those skills and responsibilities.

## Equal Pay is NOT “Comparable Worth”

- Equal pay revolves around the requirement that the work being compared is “equal work” (two people in the same job).
- “Comparable Worth” looks at the work itself and compares the skills, education, training and level of responsibility required.
- A common example: an outdoor lawn maintenance workers compared to nursery school aides. The former has traditionally been done more by men and the latter by women. The level of responsibility and education required is higher for the nursery school aides, and lifting small children may be similar to lifting requirements for those maintaining the lawn who lift bags of soil and other materials. Yet traditionally, the nursery school aides were paid less than the lawn maintenance crew, probably because of the historical connections of the jobs with men and women.

## Q<sub>6</sub>

What is a Pay Equity Audit?

## Ensure you are on the Right Side of Compliance



- Conduct a pro-active equity analysis
  - It is the best way to identify if you have a problem and to identify remedial measures if you do.
  - Examine your own compensation data before the government starts to do so. Not all disparities in pay between men and women are necessarily illegal, employers need to know that they exist in order to address them.
- Some state statutes (Massachusetts and Oregon) also incentivize companies to do pay audits by limiting their potential legal risk if a problem is found.

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## What is a Pay Audit?


- A pay audit involves comparing the pay of men and women & whites and people of color doing equal work in your organization.
  - It has three main purposes:
    - to identify any differences in pay between men and women doing equal work
    - to investigate/identify; performance, seniority, scope of responsibility, etc. the causes of any differences in pay between men and women doing equal work, and
    - to correct unequal pay that cannot be justified

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## Keep Results Guarded

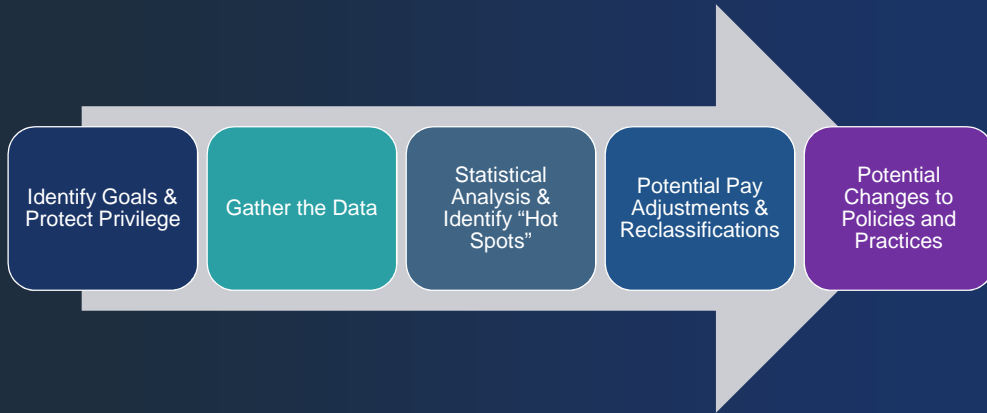
- While there are numerous benefits for employers to do pay audits, they can become dangerous if done incorrectly. They also can create a road map for employees and their lawyers to pursue pay discrimination claims.
- Employers should consider hiring outside counsel to ensure the results remain protected under the attorney-client privilege and the work-product doctrine.

A close-up photograph of a blue ballpoint pen writing a checkmark on a document. The document has several other checkmarks and dashed lines, suggesting a checklist or a form. The image is framed by a yellow border.

## How to Address Problems

- Retroactively adjust salaries
- Set new compensation going forward

# Life Cycle of a Pay Equity Audit



# Questions and Answers



# Thank You!



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