

## **Alert** | Labor & Employment



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### **Equal Employment Opportunity Commission (EEOC) Reinstates Collection of EEO-1 Component 2 Data: Pay Data Collection for Calendar Years 2017 and 2018**

September is coming, and a chilly wind is blowing for employers with more than 100 employees. By Sept. 30, 2019, employers must submit EEO-1 Component 2 data, employee wage and hour data organized by job category, gender, race, and ethnicity, for calendar years 2017 and 2018 to the Equal Employment Opportunity Commission (EEOC). A 2017 moratorium on the EEOC's collection of employee pay data was lifted in a recent court order that requires the EEOC to collect employee pay data by the end of September. While the EEOC has not yet set a firm date for when employers will be able to submit EEO-1 Component 2 data, the EEOC expects the EEO-1 Component 2 Survey to open in mid-July 2019.

Because the EEOC is not currently accepting Component 2 data, it is unclear what the EEO-1 Component 2 Survey will look like. However, the EEO-1 Component 2 form is expected to require employers to submit summary pay data for all employees, including the total number of full and part-time employees employed during the year, in each of 12 pay bands listed for each job category identified on the EEO-1 form. The pay data submitted is to be based on employee W-2 forms. The form is expected to be designed so that employers may simply count and report the number of employees in each pay band. The form is not expected to require employers to submit individual pay or salary data. Additionally, the form is expected to require employers to submit the number of hours worked during the year by employees in each pay band.

The EEOC's focus on collecting employee pay data is to ensure pay equality – equal pay for equal work. While the purpose of collecting employee pay data from employers is to allow the EEOC to better assess allegations of pay discrimination, providing pay data in broad categories without context may create the appearance of pay disparities where none exist. Employers, therefore, should audit employee titles, job duties, and responsibilities to ensure employees are properly classified within each EEO-1 job category.

Employers should also expect to report 2019 employee pay data in 2020. At this early stage in the collection of Component 2 data, however, it is not clear whether Component 1 and Component 2 data will continue to be collected separately or will share a submission deadline in 2020. No matter the deadline, time is of the essence. With a storm cloud headed in their direction, employers should be performing internal audits and correcting any disparities immediately.

Currently, EEO-1 reporting requirements are only applicable to employers with 100 or more employees, and certain federal contractors with 50 or more employees. Employers with less than 100 employees, however, should consider beginning to collect employee pay data, or at the very least, implementing the infrastructure needed to collect employee pay data.

The addition of Component 2 data to the EEO-1 Survey does not grant employers an extension to file their Component 1 EEO-1 data. Component 1 EEO-1 data, employee race, ethnicity, and gender data must still be submitted to the EEOC by May 31, 2019.

We will continue to monitor developments as they happen.

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