

# EEO-1 Reporting Deadline is Rapidly Approaching

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Employers should be mindful that the March 31, 2018, deadline for filing the 2017 Employer Information Report, commonly known as the EEO-1 report, is fast approaching. While the deadline previously fell on September 30, the Equal Employment Opportunity Commission (EEOC) expects to leave the filing deadline at March 31 annually moving forward. Employers may use employment figures from any pay period in October through December to gather the required data for the report. Federal contractors and subcontractors who are also required to submit a VETS-4212 filing may use a snapshot date of Dec. 31 annually for reporting on both the VETS-4212 and the EEO-1 report, though the filing deadlines remain different for the two reports. Employers may request a one-time extension of 30 days to submit their EEO-1 report if they do so before the March 31 deadline.

## Who Must File

Generally speaking, here is who must file: all private employers with at least 100 employees; all federal contractors and first-tier subcontractors with at least 50 employees and a federal contract or subcontract of \$50,000 or more; and all financial institutions/government depositories with 50 employees or more. Even private employers with less than 100 employees should take care to ensure that their affiliation with another company through centralized management or common ownership does not result in a collective total of 100 employees; otherwise, they may be required to file.

## Purpose of the EEO-1 Report

The EEOC has used the EEO-1 report in some form since 1966, when it became apparent that the agency needed a tool to identify potential discrimination on a more widespread scale. At that time, the commission was largely focused on desegregating workplaces and obtaining equal pay for African-American employees performing the same work as their white counterparts. Over time, the EEOC found the EEO-1 report to be a valuable tool for identifying and fighting systemic discrimination that is prohibited by Title VII.

In its present form, the EEO-1 report requires employers to provide employment data categorized by race/ethnicity, gender and job category or grouping. The EEOC and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) use the EEO-1 report to collect and analyze information from private employers and government contractors about their female and minority workforces. The OFCCP also uses data contained in the EEO-1 report to determine which federal contractors or subcontractors to select for compliance evaluations, largely focusing on facilities where the agency believes the likelihood of systematic discrimination is the greatest in light of information provided.

## Consequences of Failure to Timely File

Employers who are required to file their EEO-1 report, but fail to do so in a timely manner, may face a federal court order compelling them to comply. The federal government may also terminate its contracts with federal contractors or subcontractors who fail to timely file, and may disbar the entities from obtaining future federal contracts. The EEOC regularly discovers employer noncompliance after a charge of discrimination is filed. Upon receipt of a charge, the commission routinely checks to see whether it has the employer's EEO-1 report on file. If it does not, the EEOC typically requires the employer to enter into a conciliation agreement wherein the company commits to correct the issue and file in a suitable time in the future.

## Compensation Remains in the Spotlight

Although March 31 is the deadline for filing EEO-1 report, the Office of Management and Budget has, for now, indefinitely postponed the EEO-1 compensation reporting requirements. But the EEOC has nevertheless emphasized its continued commitment to enforcing pay discrimination laws moving forward. Furthermore, federal contractors and subcontractors selected by the OFCCP for a compliance audit are still required to submit all compensation data for full-time, part-time, contract and temporary employees to enable the OFCCP to investigate their pay practices for compensation discrimination. As such, employers are well-advised to voluntarily conduct a self-review and audit of pay practices in order to identify and correct any pay-related issues before the government comes knocking. Employers who conduct such an audit should enlist the assistance of counsel in order to protect both the data gathered and the findings from discovery that could be a part of future litigation.

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