

EEOC to Publish Update to EEO-1 Pay Data Reporting Proposal

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The Equal Employment Opportunity Commission has released an update with [revisions to its proposed EEO-1 pay data collection report](#). The proposal would have employers with at least 100 employees submitting to the EEOC all employees' W-2 earnings data and actual hours worked beginning with the 2017 EEO-1 reporting cycle.

The revised proposal will be published in the July 14 *Federal Register* and the public will have 30 days to submit comments. This revision takes into consideration public comments received on the Agency's [initially proposed pay data collection tool](#).

Which Employers Would Be Covered?

The EEOC considered comments urging that smaller employers be exempt from the pay reporting requirement but has continued to make the proposed rule applicable to all employers with at least 100 employees.

When Will the Pay Disclosures Be Required?

The revision proposes to change the EEO-1 filing deadline to March 31st of every year (instead of the current September 30th deadline) and proposes to change the workforce snapshot reported to a pay period between October 1st and December 31st of the reporting year (instead of the current July through September time period).

This change would take effect for EEO-1 filings in 2018. Employers would be required to file the new pay data component along with the existing EEO-1 report by March 31, 2018, thereby giving employers a year-and-a-half to comply with the new requirements.

No EEO-1 reports would be filed in 2017. The reporting period for 2016, however, would remain unchanged — with reports being due by September 30, 2016.

What Data Will Be Reported?

The EEOC continues to propose to have employers report W-2 earnings as the "measure of pay" for the new pay data collection report. Employers will use Box 1 of the Form W-2 to complete their EEO-1 filings.

The EEOC also continues to propose that employers report "hours worked" as a component of the revised EEO-1 form, stating "collecting hours worked is of central importance" to assessing pay disparities. The EEOC proposes to adopt the Fair Labor Standards Act's definition of "hours worked" for non-exempt employees.

The Commission provides two options for employers to report hours worked for exempt employees:

1. a proxy of 40 hours a week for full-time exempt employees or 20 hours for part-time exempt employees; or
2. actual hours worked if the employer already maintains accurate records of this information.

The EEOC acknowledges public comments received about the burden of pulling W-2 earnings and hours worked from two separate data collection systems, but explains that in not changing the proposed form, employers adjust their systems to make the information collection process easier.

How Will the Data Be Reported?

The proposed revision does not change the proposal to use pay bands to collect the W-2 income data. It does change, however, the time period for which the pay data will be reported. The revised proposal states that the pay data and hour worked will be reported for the entire calendar year, ending December 31.

How Will the Pay Data Be Used?

The revised proposal explains the collected pay data will be used in the following ways:

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Practices

Affirmative Action, OFCCP and
Government Contract Compliance

Services

Pay Equity

1. Early Assessment of Charges of Discrimination

2. EEOC Publication of Reports on Pay Disparities based on analysis of aggregation of collected pay data by:

- race
- sex
- industry
- occupational groupings
- Metropolitan Statistical Area (MSA)

3. EEOC Training on how pay data can “improve the agency’s enforcement work”

How Will the Confidentiality of Pay Data Be Protected?

The revised proposal goes into detail about how the agency will protect the confidentiality of the collected pay data, including the process for protection under FOIA and Title VII confidentiality provisions, as well as outlining internal protocols for protection of the data.

The publication also notes the Office of Federal Contract Compliance Programs will obtain the EEO-1 reports for federal contractors through the Joint Reporting Committee and explains OFCCP’s use of the FOIA process to notify contractors of requests for their EEO-1 pay data. EEOC states, “OFCCP will protect the confidentiality of EEO-1 pay and hours-worked data to the maximum extent possible consistent with FOIA.”

Jackson Lewis is preparing detailed comments in response to the EEOC’s revised proposed rule.

Jackson Lewis has a dedicated team of experts as part of its Pay Equity Resource Group that will continue to evaluate the Agency’s proposed update and provide additional insight and guidance.

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