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# **What HR Professionals Need to Know about the Revised EEO-1 Report**

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For many years, the Equal Employment Opportunity Commission (EEOC) and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have collected data from certain private employers and federal contractors and subcontractors about their employees on the "Employer Information Report," or the EEO-1 Report. The current EEO-1 Report collects annual data about the number of employees by job category and by sex and race or ethnicity.

On September 29, 2016, the EEOC announced revisions to the EEO-1 Report that will require most private employers to submit employee pay data to the federal government on an annual basis. The new requirement begins with the 2017 EEO-1 reporting cycle, and will be due by March 31, 2018. This paper outlines what changed in the reporting requirements, what didn't change, and what HR professionals need to consider as the new reporting requirements are implemented.



## What is different about the new EEO-1 Report?

The revised EEO-1 Report includes two components – called Component 1 and 2 by the EEOC. Component 1 includes the data that employers historically reported on their annual EEO-1 Report - employee demographic data by sex and race/ethnicity in 10 EEO job categories. No changes were made to the EEO job categories. Employers will also report demographic data using the same race/ethnicity and gender categories as in prior years.

### No changes were made to the 10 EEO job categories, which include:

1. Executive/Senior Level Officials and Managers;
2. First/Mid-Level Officials and Managers;
3. Professionals;
4. Technicians;
5. Sales Workers;
6. Administrative Support Workers;
7. Craft Workers;
8. Operatives;
9. Laborers and Helpers; and
10. Service Workers.

Component 2 of the new EEO-1 Report requires that employers report employee pay and hours worked information in 12 pay bands by race/ethnicity and sex in each of the current 10 EEO job categories. Below is a sample of what the new pay data report looks like for one of the 10 EEO job categories:

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												
				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 Officials and Managers 1.1	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															

## **Who must file the EEO-1 Report?**

Whether a company is required to file one EEO-1 Report is based on the total number of employees, not the number of employees at only one location. Private employers, including federal contractors and subcontractors, with 100 or more employees, will be required to submit Component 1 and Component 2 of the revised EEO-1 Report. Federal contractors and subcontractors with 50-99 employees will not file Component 2 (*summary pay or hours worked data*), but will continue to file Component 1 (*employee data by sex and race/ethnicity*) on an annual basis.

Employers who are not federal contractors or subcontractors with 99 or fewer employees and federal contractors and subcontractors with 49 or fewer employees will remain exempt from completing the EEO-1 Report. Also, state and local governments, primary and secondary public school systems, higher education institutions, American Indian or Alaska native tribes, and tax exempt private membership clubs other than labor organizations will continue to be exempt from the EEO-1 Report filing requirements.

## **When do employers have to file the new report?**

Employers historically filed EEO-1 Reports by September 30 of each year. No reports will be filed in September 2017. Instead, under the new reporting timeline, all covered employers, including those who only must file Component 1, will file EEO-1 Reports by March 31 of each year, beginning in March 2018.

## **What pay period should be used for the new report?**

Employers historically selected a pay period between July 1 and September 30 of each year. Under the new requirements, employers may choose any pay period between October 1 and December 31 as the workforce snapshot period. For example, for the EEO-1 Report that must be filed by March 31, 2018, employers may choose any pay period between October 1 and December 31, 2017.

The snapshot period determines which employees must be included on the EEO-1 Report for a particular filing cycle. Regardless of which workforce snapshot is selected, employers must report wages and hours worked for the full period covered by the W-2 wages reported for that year for each employee. For example, if an employer picks its October 1, 2017 payroll as its snapshot period, the employer would include data for those employees in its workforce as of October 1, 2017 but would have to report the total W-2 wages paid to those employees in 2017 (not just wages paid as of October 1, 2017), as well as the corresponding hours worked during the same period. Under this example, employees hired after October 1, 2017 would not be included in the report filed by March 31, 2018 even though they may have earned pay for hours worked in 2017.

Importantly, the EEOC has said that federal contractors who choose December 31 as their workforce snapshot may also use the same workforce snapshot period for filing the required VETS-4212 report beginning in 2018. For 2017, federal contractors and subcontractors will file the VETS-4212 report by September 30, 2017 using the current workforce snapshot range, which is any pay period ending date between July 1 and August 31.

## What pay data has to be submitted?

Employers who are required to report pay data will report the total number of employees during the reporting period in 12 pay bands for each EEO job category by race/ethnicity and sex.

The EEO-1 pay bands are the same as those used by the Department of Labor in the Occupation Employment Statistics survey:

<b>(1)</b> \$19,239 and under	<b>(7)</b> \$62,920 - \$80,079
<b>(2)</b> \$19,240 - \$24,439	<b>(8)</b> \$80,080 - \$101,919
<b>(3)</b> \$24,440 - \$30,679	<b>(9)</b> \$101,920 - \$128,959
<b>(4)</b> \$30,680 - \$38,999	<b>(10)</b> \$128,960 - \$163,799
<b>(5)</b> \$39,000 - \$49,919	<b>(11)</b> \$163,800 - \$207,999
<b>(6)</b> \$49,920 - \$62,919	

For example, an employer might report that it had 4 White male employees, 2 African-American male employees, and 6 White female employees who earned between \$80,080 and \$101,919 during the reporting year in EEO category 2, Professionals. All of these employees would be reported in pay band 8 in each of the respective sex and race/ethnicity columns.

Employers are to use Box 1 on an employee's W-2 tax form for pay reporting. Box 1 includes total taxable wages, tips, and other compensation paid to an employee during the year, but does not include certain elective deferrals, such as employee contributions to a section 401(k) or 403(b) plan. The EEOC Instruction Booklet also provides advice on how to handle end of year wage payments. When wages are paid in the next calendar year for work done in the last days of the prior calendar year, both the pay earned and hours worked are counted in the next EEO-1 reporting year, because that is when the pay is reported on the employee's W-2 form. For example, if an employee is paid for the last workweek of December, 2017 in January, 2018, the pay and hours worked during that last workweek would not be included in the EEO-1 Report filed by March 31, 2018. Instead, it would be included in the EEO-1 Report filed by March 31, 2019 because the pay was received in calendar year 2018.

## **What hours worked information must be reported?**

Employers also will report the total number of hours worked by all employees in each pay band. This is a fill-in field, which requires that employers add up the total number of hours worked by each employee by race/ethnicity and sex in each pay band in each EEO category.

The hours worked information to be reported should correspond to the period of time covered by the employee's W-2 statement. For non-exempt employees, employers will report hours worked as defined by the Fair Labor Standards Act (FLSA). Although employees may receive pay for vacation, sick leave or other paid time off, these hours are not generally included in the FLSA definition of hours worked, and therefore would not be included on the EEO-1 Report. For employees who are exempt from the FLSA, employers may either report actual hours worked, if collected, or use a "proxy" of 40 hours per week for full-time employees and 20 hours per week for part-time employees.

## How will the government use this information?

The EEOC will use the collected data to “focus” the early stages of its investigation of charges alleging pay discrimination. The agency also plans on issuing national, state, and industry-level reports based on the data. The EEOC encourages employers to use the published data “to compare or benchmark their own data with data from other employers in their industry or geographical area.” As it does now, the EEOC will share the EEO-1 Reports of federal contractors and subcontractors with the OFCCP, who has said that it will use the data to schedule compliance reviews. Finally, EEOC currently shares EEO-1 data with numerous academic researchers and will continue to do so once the new pay reporting requirement goes into effect.

## What should employers do now to prepare?

Employers should take steps now to determine how they will satisfy the new EEO-1 reporting requirements well before the first required filing in March 2018. *Employers should consider the following items as part of their compliance plan:*

### **Monitor possible changes to reporting due to the presidential election:**

It is possible that the EEO-1 reporting requirements may be further revised under the new administration, although the timing and nature of any such changes remains impossible to predict at this time. Berkshire Associates is monitoring the impact of the election on workplace regulatory and policy proposals, including the new EEO-1 reporting obligations, and will provide updates as they become available.

### **Select an appropriate workforce snapshot period:**

Employers should determine the workforce snapshot period they will use for reporting. While the workforce snapshot period can be changed from year to year, most employers use the same date. Employers with large seasonal workforces may want to consider selecting an earlier payroll period in the last quarter if, for example, they hire a significant number of workers in November and December. Similarly, employers with pending acquisitions and mergers also will want to carefully consider how various workforce snapshot periods will impact reporting obligations.



### **Determine how hours worked information will be reported:**

Employers also will need to determine whether they will report actual hours worked for exempt employees. If this information is not currently being collected, employers will have to decide if they want to begin collecting this information for purposes of the report or use the proxy of 40 hours for full-time employees and 20 hours for part-time employees.

### **Confirm you can retrieve the required information from your systems:**

Employers should take steps to confirm how they will retrieve and verify the required pay and hours worked information from their recordkeeping systems. This is particularly important since in some cases this data may be stored in different systems. In many cases, wages and hours worked information may be stored in an employer's payroll or timekeeping systems, while other required data, such as employee race/ethnicity and sex, may be stored in a human resource information system (HRIS). Since a company's information technology budget may be set far in advance, employers should consult with their vendors to determine how and when these systems will be modified to accommodate the new reporting requirements, and to determine the cost of implementation.

When conducting this review, if the required information is being gathered from multiple systems, employers should confirm that they can synthesize this information by a common employee identifier, such as employee identification number. Employers also should confirm that they can gather hours worked information for each employee that matches the payroll periods covered by the wages reported on Box 1 of the W-2 form. Because of payroll period ending dates, the reported pay data and hours worked information may not correspond to a calendar year, but will cover portions of two calendar years, such as December 16, 2016 to December 15, 2017 for an employee's 2017 W-2. In addition, employers should evaluate how they will total the hours worked for each employee by sex, race/ethnicity, pay band, and EEO category.

### **Determine report filing strategy:**

Employers may want to reconsider how they file EEO-1 Reports in the future. Although almost all employers use the EEOC's online filing tool to file EEO-1 Reports, far fewer employers currently use the agency's batch upload feature. Because of the number of data cells in the

new report (3600 cells per establishment reported vs 180 cells per report in previous years), and the potential for data entry errors, more employers may want to begin using the batch upload. This process allows users to electronically transmit a data file to the EEOC rather than manually entering data into each relevant cell on the EEOC's online filing system.

Employers also should reevaluate how they file EEO-1 Reports for small locations with under 50 employees. Employers currently are permitted to file Type 6 or Type 8 reports for these locations. Type 6 reports only require the name, address and total employment for each establishment employing fewer than 50 employees, without any information about the race/ethnicity, sex, pay, or hours worked for employees, while Type 8 reports are a typical individual establishment report requiring all reporting elements. Because submitting pay data for small locations is more likely to reveal the pay of individual employees, employers may want to consider filing Type 6 reports for these locations if they are currently filing Type 8 reports. Keep in mind that employers using a Type 6 report must still enter all employment data into the Company's Consolidated Report (Type 2), while data from Type 8 reports automatically transfers to populate the Consolidated Report in the EEOC's online filing system.

Currently, employers need to seek approval from the EEOC if they want to switch from filing Type 8 to Type 6 reports. The EEOC has indicated that employers may request this change once the 2018 filing cycle is opened, but not before. Employers wishing to change their filing strategy should account for this approval process in any implementation timelines.

### **Conduct a review of EEO-1 classifications:**

Now is also a great time for employers to verify that their jobs are placed in the correct EEO job category. Employers often make data entry or misclassification errors, particularly when multiple individuals are inputting EEO classification information into an employer's systems, or when multiple systems are used for different workforces, such as in the case of mergers or acquisitions. Ensuring that your jobs are properly and consistently placed in the correct EEO job category is important because the enforcement agencies will initially evaluate raw wage differences by the reported EEO category classification, and will also publish such data by industry or region using these categories.

### **Review NAICS code assignments:**

The EEOC uses the North American Industry Classification System (NAICS) for classifying establishments (individual business locations) by type of economic activity. Employers were always required to report the NAICS code on each individual establishment EEO-1 Report. However, since the government will now use these codes to publicly report aggregate pay data by industry and geographic location, having the correct NAICS codes becomes more significant. Employers should review their existing NAICS codes and validate whether each of their locations is properly reported to the correct industry. The NAICS code should accurately identify the establishment's primary business function and may be different for different establishments. For example, an information technology location may have a different NAICS code from a manufacturing establishment within the same company.

### **Prepare proactive pay equity analyses:**

Employers should consider conducting proactive pay equity analyses before the first pay data collection reporting period. This will allow employers to evaluate whether any wage differences are explainable by legitimate, non-discriminatory reasons and to make any appropriate adjustments to employee pay before the first reporting cycle. These analyses should be done by individuals familiar with the new reporting requirements using appropriate statistical analyses under the direction of legal counsel.

### **Ensure changes are made in time:**

The first EEO-1 Report must be filed by March 31, 2018. Employers should take proactive steps to ensure that the required data can be gathered correctly and to determine how much time is required to verify the data. Employers may want to gather "test data" for at least a portion of their workforce using 2016 W-2 information to determine an approach that makes the most sense for the organization.

## **Berkshire Associates Can Help File Your EEO-1 Report**

Berkshire Associates offers comprehensive EEO-1 reporting services to federal contractors and subcontractors and other private employers. Our experts provide guidance on regulation changes, data evaluation, and report preparation, and can ensure compliance with existing and newly enacted directives.

## Job Category Evaluation

Berkshire Associates can review the EEO job categories assigned to employees based on factors such as job title, FLSA exempt status, and salary. Our experts will advise you on whether employees are categorized appropriately. The accurate reporting of jobs under the correct EEO job category is critical, as the EEOC uses this data to analyze employment patterns, and going forward, to evaluate wage differences.

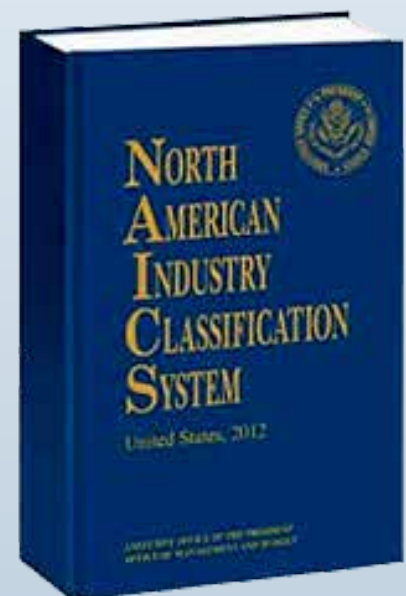
## Industry Coding Review

The EEOC uses the NAICS to clarify establishments (individual business locations) by type of economic activity. Companies were always required to report the NAICS code on their EEO-1 reports. However, since the government will now use these codes to publicly report aggregate data by industry and geographic location, having the correct codes becomes more significant. Berkshire Associates can help you review your existing NAICS codes, and assist in validating whether each of your locations are properly recorded to the correct industry code.

## Proactive Analysis and Self-Evaluation

The new EEO-1 Report will gather three distinct types of data (1) employee race and gender, (2) W-2 earnings, and (3) hours worked to determine whether race and gender might be contributing factors in how pay is distributed. The EEOC and OFCCP will use this information “to more effectively focus agency investigations, assess complaints of discrimination, and identify existing pay disparities that warrant further investigation.”

Berkshire Associates encourages employers to take a proactive approach to meeting the new EEO-1 requirements. We can run preliminary or sample reports to assess your current situation, and help you prepare for the new requirements. These proactive analyses help you identify areas that are satisfactory and areas that may need further attention. We also can prepare pay equity analyses to help you evaluate whether there are legitimate, non-discriminatory reasons for any raw wage differences.



### **Our experts can evaluate your reports to:**

- Ensure that each employee has an appropriate race/ethnicity and gender code
- Ensure that the systems used to collect and report data are ready to do so, understanding that this data may come from multiple systems
- Identify issues that may be flagged by the EEOC or OFCCP
- Determine whether more extensive pay equity analyses should be conducted in order to
  - Explain why discrepancies exist, or
  - Create a plan to correct the discrepancies

## **Filing**

Once your report(s) is complete, Berkshire can file your EEO-1 report electronically through the EEO-1 online filing system.

## **We Are Here to Help**

Whether you need to submit a single EEO-1 Report, or more complex, multi-establishment reports, Berkshire Associates eases the burden of the entire reporting and filing process. We provide end-to-end guidance and over 30 years of skill, expertise, and knowledge of how to effectively navigate regulatory requirements. Berkshire can also prepare and file your EEO-1 reports on an annual basis. Please ask your Berkshire representative about multi-year agreements.

## **For further information on EEO-1 services contact us:**

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