

AUGUST 22, 2019 | REGULATORY & GOVERNMENT OVERSIGHT

EEO-1 Component 2 Data Submission Deadline Fast Approaching

As we [reported](#) back in March, Judge Chutkan of the U.S. District Court for the District of Columbia lifted the stay on the Equal Employment Opportunity Commission's ("EEOC's") 2016 final rule mandating that employers who are required to submit an annual Employer Information Report ("EEO-1") also submit pay data by sex, ethnicity, and race. This additional piece of the EEO-1 Report has come to be known as "Component 2." After the  Judge lifted the stay, the EEOC responded that it would not be in a position to accept the EEO-1 Component 2 by May 31, 2019 – the deadline to submit the standard data set collected through the EEO-1 Report ("Component 1") – and adjusted the deadline to submit Component 2 data to September 30, 2019. Judge Chutkan reluctantly accepted this timeline and mandated that two years of data be collected by this date. Accordingly, the EEOC provided notice that it would be requiring employers to submit pay data for calendar years 2017 and 2018 by or before September 30, 2019.

Despite the fact that collecting this data could be very burdensome for employers, the EEOC's deadline provided only a matter of months in which to gather and submit it. Now, with just over a month to spare, covered employers must ensure they understand what data needs to be submitted, how to tabulate the data for submission, and how to ultimately submit the data to the EEOC.

What is Required for the EEO-1 Component 2 Data Submission?

All employers with more than 100 employees, and federal contractors with more than 50 employees, must submit demographic data on their workforces on an annual basis pursuant to the EEO-1 Component 1 Report. To collect this data, employers select a specific period in the prior calendar year, known as the workforce snapshot, and pull the necessary data from that period for submission. For Component 2, employers must also report pay data into one of ten EEO-1 job categories by sex, ethnicity, and race using a specific pay period (the workforce snapshot for Component 2) from both calendar years 2017 and 2018. The workforce snapshot period must be a pay period selected between October 1 and December 31 of each year. Employers must use information from W-2s to allocate wages paid to employees in one of ten EEO-1 job categories into twelve pre-defined pay bands. These pay bands are based on calendar year W-2 income, which includes base salary as well as overtime pay, bonuses and commissions. In other words, employers need to identify the total W-2 earnings for a 12-month period for all the employees included in the workforce snapshot period, and the number of those employees that fall within each pay band, broken out by race, ethnicity, and sex.

For the Component 2 Report, the EEOC also requires employers to report the total number of hours worked by the employees included in each pay band. This applies for both exempt employees and non-exempt employees included in the designated workforce snapshot. For exempt employees, employers can provide either (a) actual hours worked if tracked or (b) proxy hours of 40 hours per week for full-time exempt employees or 20 hours per week for part-time exempt employees. As employers did not expect they'd need to be prepared to submit this data in 2019 because the rule had been stayed, it's likely that a number of employers will have to rely on the second option of proxy hours for 2017 and 2018 if they do not otherwise track the hours of their exempt employees.

If employers use the same workforce snapshot as they used for the EEO-1 Component 1 data submission, they should already have a portion of the information needed for Component 2, specifically the demographic information and selected job categories. Employers must either complete the online form or upload the data file using the [Component 2 EEO-1 Online Filing System](#).

Guidance and Resources to Assist with EEO-1 Component 2 Submission

Similar to what it has done in the past for the EEO-1 Component 1 data submission, the EEOC has generated guidance documents to assist employers with completing Component 2. It has made these resources available on the Component 2 EEO-1 Online Filing System site. Specifically, the resources include a [User's Guide](#) that provides information on the form and instructions on how to complete Component 2 filings, a [sample filing form](#), and a set of [FAQs](#) addressing the steps for filing and the specific data to be submitted.

The FAQs are a particularly useful resource because they succinctly answer specific questions of if, when, what, and how to file. For instance, in FAQ #5, the EEOC states that employers are permitted to choose a different workforce snapshot period for reporting Component 2 data for each of 2017 and 2018 than they did for their Component 1 submission. Generally, an employer will likely want to choose the same workforce snapshot period for the Component 2 data because, in completing Component 1, it has already gathered a portion of the information it will need to complete Component 2. However, if there was a pay period during each of 2017 and 2018 where there were much fewer employees, it may be advantageous to go with that period instead to limit the data that is collected and provided to the EEOC. This would be particularly beneficial if the workforce snapshot period chosen falls below 100 employees as the EEOC makes clear in FAQ #4 that the workforce snapshot period should be used to determine whether the employer meets the 100-employee threshold for reporting.

The most recent FAQ added addresses the question of how to submit data based on gender when an employer collects information on gender beyond the male/female binary. In response to this question, the EEOC has stated that employers can use the comment box on the Certification Page to provide the required data for non-binary gender employees, designating their combined work hours, as well as the job category, pay band, and race/ethnicity for each individual. To date, employers have had to identify their employees in the EEO-1 Report in a binary manner – male or female. Pursuant to this FAQ, employers can now accurately identify the gender of non-binary employees when they submit the Component 2 data using the comment box. It will be interesting to see whether the EEOC expands the capacity of the form's comment box to accommodate this change and still allow employers to provide other necessary comments to their submissions.

The Component 2 EEO-1 Online Filing System is likely to be the place where the EEOC posts any new or revised

guidance or information on completing the Component 2 data submission. Thus, employers should consider periodically checking this website. For example, it's unclear at this point whether the EEOC will permit brief extensions to individual companies on the current deadline for submitting Component 2 data as it did for filing of data required in Component 1 of the EEO-1 report. If the EEOC does provide this option, it will likely use this system as one way of publicizing it.

As of today, employers have approximately 39 days to submit the EEO-1 Component 2 data to the EEOC. Thus, to the extent that they have not yet done so, employers should start trying to gather the required information as soon as possible to ensure they head off any issues with collecting the data and address any questions that arise before the September 30th deadline.