

Blog Post

2022 EEO-1 Component 1 Data Collection Now Set to Begin Mid-July 2023

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The EEO-1 reporting deadline has become a moving target, so covered employers need to sharpen their data collection and be ready to upload. The U.S. Equal Employment Opportunity Commission (EEOC) recently announced that the collection window will open in “mid-July” 2023, not April, as initially scheduled. Covered employers should expect to have the same amount of time (about one month) to upload or file their 2022 EEO-1 Component 1 data through the EEOC’s website before the window closes. Despite postponement of the deadline, employers should do what they can now to prepare for submission.

Who Is Required to File EEO-1 Reports?

The EEOC and the U.S. Department of Labor Office of Federal Contract Compliance Programs (OFCCP) regulations require eligible employers to file Standard Form 100 (EEO-1 reports) annually through the EEOC’s dedicated website for EEO-1 Component 1 data collection at www.eeocdata.org/eeo1. The filing of EEO-1 reports is mandatory and not voluntary for “eligible” employers under federal regulations. Those employers covered by the EEO-1 reporting requirement must summarize their workforce’s demographics by race/ethnicity, sex, and job categories.

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Employers who are required to file EEO-1 reports include:

- Private-sector employers that are subject to Title VII of the Civil Rights Act of 1964 (Title VII) and have **100 or more employees**;
- Employers subject to Title VII with fewer than 100 employees if the employer is affiliated with another company so as to be considered legally as a single enterprise employing a total of 100 or more employees; and
- Certain federal contractors employing 50 or more employees.

What Type of Data Is Required for the EEO-1 Component 1 Report?

An EEO-1 report provides the EEOC with a snapshot of a covered employer's workforce during a specific payroll period of the applicable year. Employers are required to gather this information from company records and employment documents completed by their employees and enter and/or upload this information through the EEOC's EEO-1 Online Filing System (OFS). Through the OFS, employers are able to enter and/or update company information; file or upload workforce demographic data either by entering the data into the OFS or uploading a data file using an approved EEOC template; enter any remarks or explanations regarding the report; and certify the accuracy of the information entered through OFS.

The Categories for Workforce Data

According to the EEOC, employee self-identification, especially as to race and ethnicity information, is ideal. However, where an employee declines to self-identify, employment records or observer identification may be used instead. The EEOC has a designated list of race and ethnicity categories that employers should be mindful of when collecting this

information from their workforce. The categories include:

- Hispanic or Latino
- White
- Black or African American
- Asian
- American Indian or Alaska Native
- Two or More Races

Employers are also required to provide gender/sex data by an employee's job category. Although the EEOC added an "X" gender marker as a component of the charge intake process last year, there is no current equivalent for EEO-1 reporting of non-binary individuals. Employers who seek to include this information can do so using the remarks section of the EEO-1 report. Employers are required to retain a copy of the most recent EEO-1 report filed at each reporting unit in the event the EEOC requests this information from the employer.

Potential Risks and Liabilities Related to EEO-1 Reports

Covered employers need to be ready to file their EEO-1 reports in mid-July 2023 because the EEOC only provides approximately one month for upload of the EEO-1 Component 1 data. If a covered employer fails to timely upload its data, the EEOC has the power to seek a court order to obtain compliance. For federal contractors or subcontractors, penalties for non-compliance could include the termination of their contracts and debarment from future contracts. Making willfully false statements on EEO-1 reports is a violation of federal law which is punishable by a fine or imprisonment under the law.

If the preparation or filing of an EEO-1 report would create an undue hardship for an employer, it can apply to the EEOC for an exemption or an alternative

reporting method in writing prior to the filing deadline for the report. The EEOC has stated that EEO-1 reports and the information from individual reports will be kept confidential by the agency as required by Title VII, and will not be made public by the EEOC unless the agency institutes a proceeding under Title VII involving the EEO-1 Component data. Nonetheless, federal contractors and subcontractors may be aware of a pending request for the OFCCP to release their 2016-2020 EEO-1 data in response to a Freedom of Information Act (FOIA) request from a nonprofit news organization, which has an objection period currently set to close on March 3, 2023 at 11:59 pm (EST). We will continue to monitor the circumstances of the FOIA request, as well as provide updates if the general EEO-1 reporting date changes again.

Employers should consult their Akerman Labor and Employment attorney to assess whether they are a covered employer required to file an EEO-1 report and to seek guidance in gathering workforce data to ensure they can appropriately certify that the information that they submit to the EEOC is accurate and prepared in accordance with the EEOC's instructions.