

**Wiggin and Dana
Labor and Employment
Client Alert: EEOC Revises EEO-1 Report
to Include Summary Pay Data**

Overview & Key Points

The EEOC has revised its EEO-1 form to include information on summary pay data. Covered employers will now be required to submit summary compensation data categorized by gender, race, and ethnicity. The EEOC's stated rationale for the change is that it will be better able to discern pay "patterns" for an employer or industry in its effort to combat pay discrimination. According to the EEOC, the new form, which is utilized by both the EEOC and the OFCCP, will be used to determine "outliers" and to "target appropriately" those employers whose compensation data raises a red flag.

Who is Covered?

- Private employers, including but not limited to federal contractors and subcontractors, with 100 or more employees will be required to report summary pay data.
- Federal contractors and subcontractors with 50-99 employees will NOT be required to report summary pay data but will continue to be required to report employees by job category, gender and race/ethnicity, the same as they currently do.
- Employers with 99 or fewer employees and federal contractors and subcontractors with 49 or fewer employees will NOT be required to complete an EEO-1 report.

What is the Effective Date?

- The new EEO-1 report will be due March 31, 2018 and will include summary pay data based on W-2 wage information for the 2017 calendar year.

What Information Will Be Requested?

- The new form contains two additional pieces of information: salary ranges and hours worked.
- The form is broken out into the same ten EEO job categories. However, each job category will now contain twelve salary bands. Covered employers will be required to report both the total number of employees and the total hours worked in each salary band by gender and race/ethnicity. Employees to be reported are “all permanent full- and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions”. [Click here](#) to see a copy of the sample form.

Suggested Actions for Employers

- Conduct a self-audit of your current employee compensation and pay practices to detect disparities and, if any are found, develop a method regarding how best to address them.
- Ensure the company's payroll or HRIS systems will be able to provide the required information.
- Review job descriptions to be sure they are up-to-date and accurately support and justify the salary associated with the position.
- Ensure there is documentation that explains the company's policies on bonuses, commissions, overtime, etc. – any factor that affects compensation.

Definitions

The EEOC has published the following descriptions of pay-related terminology:

“Hours Worked” means the annual sum of hours (1) a nonexempt employee worked within the meaning of the Fair Labor Standards Act (FLSA) during the EEO-1 reporting year; or (2) an exempt employee worked during the EEO-1 reporting year based on either (a) a proxy of 40 hours per week for a full-time exempt employee, and 20 hours per week for a part-time exempt employee, multiplied by the number of weeks the individual was employed during the EEO-1 reporting year; or (2) actual hours worked by an exempt employee if the employer already maintains accurate records of this information.

“Pay” means an employee’s W2 earnings, specifically those reported in Box 1 of the W2 form-Wages, tips, other compensation. IRS directions for that entry are “Show the total taxable wages, tips, and other compensation that you paid to your employee during the year. However, do not include elective deferrals (such as employee contributions to a section 401(k) or 403 (b) plan) except section 501(c)(18) contributions.” Employers are expected to use payroll reports for the previous four quarters to generate the necessary data. Please refer to the IRS website for specific examples: <https://www.irs.gov/instructions/iw2w3/ch01.html>

Definitions

“Pay band” means a range of salaries with a minimum and maximum value into which employee pay data is organized. The twelve pay bands are:

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

Additional information for the new form may be found in the EEO-1 Instruction Booklet which can be accessed at:

<https://www.eeoc.gov/employers/eo1survey/2017survey.cfm>

Wiggin and Dana Contact Information

Please feel free to contact John Zandy or Robin Martocci if you have any questions regarding this advisory.



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