



WEBINAR Q&A

EEO-1 Pay Data Reporting Component 2: Next Steps for September's Deadline | July 17, 2019

- 1. 2018 was the first year we had to report EEO-1 survey. Which I did complete. If we did not have 100 employees in 2017 do we still have to submit that pay data? OR Do we only do 2018 Pay data?**

Only report Component 2 EEO-1 in 2018 in which the Company had 100+ employees.

- 2. If we used the Type 6 reporting for Component 1, can we switch to Type 8 for Component 2?**

Yes.

- 3. All employees - part time also?**

Yes – all full time and part time employees.

- 4. Do we need to use the same time period that we previously reported the numbers for?**

No, an employer can use a different snapshot date in Component 2 than was used in Component 1.

- 5. I am looking at the snapshot period to determine the employees that I will report on and then using W-2 box 1 for their salary. I'm not looking at the salary earned at the time of the snapshot, correct?**

Correct. The snapshot is only for the "pool" of employees to report. The earnings to report for only those employees are as of 12/31 (W-2 Box 1).

- 6. For hours worked, am I reporting for the whole year and just using the snapshot pay period to identify who I am reporting on?**

Yes.

- 7. We track hours on a quarter hour basis. To report the hours worked, will we be able to enter a decimal number?**

Nothing we have seen suggests that the EEOC's web portal will accept less than whole dollar amounts.

- 8. On the sample form the Total # hours worked is listed at the bottom of the form. Do you really think they want it by job category too?**

Not by EEO Occupation Code generally, but there is a total column for each of the 12 pay bands within each of the EEO "job categories." So each job category will have 12 totals.

- 9. I had heard that we do not need to count or include an employee in the Component 2 report if he/she worked less than 20 calendar weeks in the reporting year or the prior. Would you agree with that information? Thanks!**

We've seen nothing to suggest that. An employee is counted if on the payroll as of the snapshot date.

- 10. If we have not received a letter with user id, do we still need to expect to file?**

Yes – the letter is considered an EEOC courtesy notice, rather than a jurisdictional prerequisite to filing Component 2 data. You can also request your User ID on line through the EEOC website.

11. If I have a snapshot of 2019 with less than 100 employees, but have a snapshot for 2019 of over 100 employees, do I only have to file component 2 for 2018?

You only have to file the Component 2 pay and hours worked data for any year in which the employer has 100 or more employees.

12. Hours worked includes paid leave?

No. For non-exempt it's only hours actually worked. Do not count hours paid but not worked under the FLSA (i.e., not vacation, PTO, holidays, sick days, FMLA leave utilizing paid time off, etc.).

13. To clarify, should all employees that were on our payroll at the chosen reporting period be reported on? Even if they are no longer employed?

Yes. Select any snapshot date in 4th Quarter 2017 and 2018 and report those employees. They are still reported even if an employee quits or is terminated after the snapshot date, but before end of year.

14. Would you recommend waiting until mid-August once the data file upload comes out to file?

It hinges on which method you choose to transmit the data, which partly depends upon the size of workforce, technology sophistication of the pay and hours worked database, and other factors. Some employers who have manually entered their Component 1 EEO-1 Report previously may continue to do so for Component 2.

15. Is reporting based on a corporate level or location level?

If you are a multi-establishment employer, Component 2 data must be reported for at least principal location (headquarters), each establishment with 50+ employees, and a consolidated report encompassing all employees.

16. We are a vocational rehabilitation program that has a special minimum wage certificate from the DOL to pay piece rate for certain positions. Is there anywhere in the reporting process where we can explain that?

There is no online reporting mechanism for an employer to enter and transmit/upload a narrative description of its compensation system or practices. The W-2 Box 1 amount will determine into which pay band an employee is slotted. However, if investigated by EEOC, or audited by OFCCP, the employer can then provide information about why employees in the same job title earned different amounts (presumably based on piece rate or other incentive driven productivity).

17. Do we include OT hours in the actual hours worked total for non-exempt employees?

Yes, hours worked is the sum of both straight time and overtime hours worked.

18. Can we use for salaried employees who we do not track hours, but know they have taken 4 weeks off for vacation, can we deduct their 4 weeks, then assume 40 hours/week x 48 weeks?

If you are counting actual exempt hours worked, then do not count paid vacation time off. However, if you are using a proxy (which is not intended to be exact) then report either 40 hours per week (FT employees) or 20 hours per week (PT employees) "*multiplied by the number of weeks the individuals were employed during the EEO-1 reporting year.*" (EEOC Instruction Booklet). Thus, if using the exempt employee proxy factor, do not back out vacation, PTO, etc. It's 40 or 20 X weeks employed.

19. What are the employer requirements for "allowing employees to voluntarily self-identify" Am I supposed to go around and ask each person? Do I need to post a notice? What does this mean?

Employers should utilize one or more (consolidated or separate) self-ID forms for employees to voluntarily elect to disclose their sex and race/ethnicity. This is typically done in new employee orientation or onboarding (post-offer). Federal contractors/subcontractors have additional tracking

obligations, including soliciting disability and veteran status, as well as at the applicant stage (pre-offer). Such data should be maintained as confidential, and not available to hiring managers.

20. We are a Financial Institution (using Fed Funds) averaging 70 employees annually. Are we still required to file Component 2?

No, if total employee headcount is below 100.

21. Can we bill the federal government for time spent on these 2 years of reports for those of us who have or had a rather archaic system for 2017 and 2018, which will require several hours (TBD)?



22. Deadline for reporting Component 2 data is September 30th, correct? And by 11:59pm on September 30th?

Yes. 9/30/2019 for both 2017 and 2018 data.

23. If the EEOC was hoping to embarrass employers, will the component 2 data become public record?

Unlike the original proposal in 2016, we have not yet seen anything to suggest that EEOC intends to post industry pay data on its website for current public consumption.

24. Box 1 wages includes vacation, holiday, etc. Which doesn't match the hours reporting requirement (to exclude those). Is that correct?

That is correct.

25. For exempt employee hours worked do I back out the vacation, PTO hours, etc.?

If you are counting actual exempt hours worked, then do not count paid but unworked time. However, if you are using a proxy (which is not intended to be exact) then report either 40 hours per week (FT employees) or 20 hours per week (PT employees) "multiplied by the number of weeks the individuals were employed during the EEO-1 reporting year." Thus, if using the exempt employee proxy factor, do not back out vacation, PTO, etc. It's 40 or 20 X weeks employed.

26. If interns are employed but not working full time hours at the time of the pay period chosen, are those interns considered "temp employees" or "part time" employees for purpose of reporting?

If interns are unpaid (such as for college credit) then do not report because they are not direct employees. If interns are direct employees on the payroll, then they are part time employees and must be reported on Component 2.

27. If we use a different snapshot than we did for component 1, does that mean that we need to recalculate the job class and race for any new employees since that time?

You will need to report on the pay and hours worked for any employee on the payroll as of the Component 2 snapshot. If you have not obtained the sex and race/ethnicity of all employees in that snapshot, or categorized job titles into EEO job categories, you will have to do so.

28. What will happen if employers file the Component 2 data after the deadline?

The Federal District court overseeing the EEO-1 pay and hours worked reporting lawsuit is requiring EEOC to keep the online reporting portal open until the volume of employers reporting Component 2 equals the average number of employers that report on Component 1. At some point, however, EEOC will close the online portal and employers will be unable to report late.

29. I have 21 locations and only one of them is over 100 employees and 4 more of them have more than 50 employees so I just need to send a list of all of the other companies?

Yes, Type 6 or Type 8 report. Don't forget that the employees in each of those 16 other establishments with less than 50 employees must be included in the EEO-1 Consolidated report (Type 2).

30. We have switched payroll providers and only have hard copy reports for that year. What is the process if we are not able to report with this data?

Unfortunately, the process undoubtedly will involve an enormous amount of manual work. There is no "safe harbor" for difficult circumstances.

These materials have been prepared for informational purposes only and are not legal advice. They do not constitute a lawyer-client relationship. Before acting on the basis on any information or material, readers who have specific questions or problems should consult their lawyer. © 2019 Miller Johnson. All rights reserved.