

## IT'S EEO-1 REPORT FILING SEASON. ARE YOU DOING IT RIGHT?

Employers rightfully rejoiced last summer when they learned they would not be required to include pay data on their 2017 EEO-1 report. Indeed, as we [reported](#) last August, that new and controversial requirement has been put on hold—perhaps forever. But, covered employers are still required to report workforce race/ethnicity and gender information by job category. The deadline to report is March 31, 2018. The guidelines below should help ensure you're reporting correctly and alleviate unnecessary risk and headaches. Most importantly, you should be careful when answering the question about whether you are a federal contractor.

- **Determine if you're required to file.** Private employers with at least 100 employees and federal contractors with at least 50 employees and a federal contract (or first-tier subcontract) of at least \$50,000 are required by federal law to file an EEO-1 report. (State and local government employers file a similar EEO-4 report.) If your company has filed in the past, you have probably received an email from the EEO-1 Joint Reporting Committee alerting you that the electronic filing system is now open. If you're a first time filer, you can access instructions and guidance materials on the [EEO-1 Survey Page](#).
- **Special requirements apply to multi-establishment organizations.** Organizations that conduct business at more than one physical address must file multiple reports, including a consolidated report, headquarters report and an individual establishment report for each separate establishment. It can be cumbersome navigating EEOC's technical definitions applicable to this process. A new "User's Guide" and "How-to-Guide" are designed to help you and are accessible from the [EEO-1 Survey Page](#).
- **You must tell the EEO-1 Joint Reporting Committee about mergers, acquisitions or spinoffs.** If your company has experienced a merger, acquisition or spinoff since your last EEO-1 report (which would have been the fall of 2016), then you are required to notify the EEO-1 Joint Reporting Committee at specific email addresses that are available on the [EEO-1 Survey Page](#).
- **Your workforce snapshot must come from the fourth quarter of 2017.** EEOC has clarified on its [EEO-1 Question and Answer page](#) that the employment data used for the 2017 EEO-1 report must come from a workforce snapshot period in October, November or December of 2017.
- **Take the time to ensure your data is accurate.** You will be required to certify the accuracy of your report. And, EEOC will share your data with the Office of Federal Contract Compliance Programs ("OFCCP"), which is the federal agency responsible for scheduling affirmative action audits. The data you report is a factor in OFCCP's audit selection process. If you're unlucky enough to be scheduled for an audit, having to explain why the data you reported was incorrect may damage your credibility and get you off on the wrong foot with OFCCP.
- **Don't admit federal contractor status without being sure.** You will be asked on the EEO-1 report to disclose whether your company is a federal contractor or first-tier subcontractor. Arguably, this is the most important information you will provide as it bears directly on the likelihood that you will be selected for an affirmative action audit. Providing willfully false information on your EEO-1 report carries the risk of criminal penalties, so it critical that you answer this question in good faith. For health care providers, the answer is not always clear. Remember: participating in Medicare/Medicaid or other federal grants does not make you a federal contractor. (See our past post: [When Do Hospitals Have to Comply with Affirmative Action?](#))

For multi-establishment organizations, an answer to the federal contractor question will need to be provided with respect to every establishment. It is important to know that if you answer "Yes" to the question for any one establishment, the system will automatically default the answer to "Yes" for all of your other establishments even though that might not be accurate. Depending on your specific facts and circumstances, it may be in your best interest to go back and manually change the answer to "No" for certain establishments.

Although filing your annual EEO-1 report is largely a technical exercise, it is critical that you do it right—especially regarding the federal contractor question—in order to avoid unnecessary risk and headaches associated with federal affirmative action audits.

If you have any questions or would like additional information, please contact [Jon Bumgarner](#) at (317) 977-1474 or

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