

EEO-1 FILING WEBSITE TO OPEN SOON - SUBMISSION DEADLINE EXTENDED TO MAY 31, 2019

The EEO-1 filing website will open in early March. The filing deadline has been extended to May 31, 2019. Both dates were pushed back as a result of the recent, partial federal government shutdown.

Luckily for employers, the controversial pay data disclosure requirements remain on indefinite hold, as we previously [reported](#); however, covered employers still must report workforce race/ethnicity and gender information by job category as has been required for years.

The following guidelines should help ensure organizations are reporting correctly and alleviate unnecessary risk and headaches. Most importantly, organizations should be careful when answering the question about whether they are a federal contractor.

- **Determine if your organization is 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, they will likely receive an email from the EEO-1 Joint Reporting Committee when the electronic filing system is opened. If your employer is a first time filer, they 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.
- **Employers must tell the EEO-1 Joint Reporting Committee about mergers, acquisitions or spin-offs.** If your company has experienced a merger, acquisition or spin-off since your last EEO-1 report, then they are required to notify the EEO-1 Joint Reporting Committee at specific email addresses, available on the [EEO-1 Survey Page](#).
- **Keep an eye out for updated guidance from the EEOC.** The EEOC published new guidance documents last year that remain accessible from the [EEO-1 Survey Page](#). It is unknown whether these documents will be updated or other guidance will be published for the current reporting year. The EEOC recently announced that "[d]etails and instructions for the 2018 EEO-1 Report filers will be forthcoming."
- **Take the time to ensure company data is accurate.** Employers will be required to certify the accuracy of their report. EEOC will share the data with the Office of Federal Contract Compliance Programs ("OFCCP"), which is the federal agency responsible for scheduling affirmative action audits. The data organizations report is a factor in OFCCP's audit selection process. If an organization is unlucky enough to be scheduled for an audit, having to explain why the data they reported was incorrect may damage their credibility and get them off on the wrong foot with OFCCP.
- **Don't admit federal contractor status without being sure.** Employers will be asked on the EEO-1 report to disclose whether their company is a federal contractor or first-tier subcontractor. Arguably, this is the most important information they will provide as it bears directly on the likelihood that they will be selected for an affirmative action audit. Providing willfully false information on an EEO-1 report carries the risk of criminal penalties, so it critical that your organization 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 an organization a federal contractor. (See our past post: [When Do Hospitals Have to Comply with Affirmative Action?](#))

Although filing an annual EEO-1 report is largely a technical exercise, it is critical that organizations 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 jbumgarner@hallrender.com or your regular Hall Render attorney.