



EEOC Proposes Employers Provide 2018 Pay Data By September

April 4, 2019 | [EEOC, Labor And Employment](#)

On April 3, 2019, the Equal Employment Opportunity Commission (EEOC) announced its proposal to require employers to submit pay data in their EEO-1 reports by Sept. 30, 2019.

Employers with 100 or more employees are currently required to submit annual EEO-1 reports disclosing their number of employees by:

- Job category
- Race
- Sex
- Ethnicity

The current deadline for employers to submit these reports is May 31, 2019.

However, employers now may also be required to submit 2018 pay data by Sept. 30, which would include pay data from a single payroll period – of the employer's choosing – between Oct. 1 and Dec. 31, 2018.

The EEOC announced in 2016 that it would require employers to include pay data in their EEO-1 reports to identify pay gaps and investigate pay discrimination practices. The Office of Management and Budget (OMB) implemented a stay of the revised EEO-1 report, halting the EEOC's pay data reporting requirements. The National Women's Law Center and the Labor Council for Latin American Advancement challenged the stay, and on March 4, 2019, a federal court judge in Washington, D.C., agreed, reinstating the pay data requirement.

During an April 3, 2019 hearing, the EEOC informed the court how it

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proposed to collect the pay data under the revised EEO-1 ruling. The EEOC stated that it would need to hire a data and analytics contractor to modify its data collection capabilities, which would cost “in excess of \$3 million.” The EEOC also proposed the Sept. 30 deadline for employers to collect and submit retroactive 2018 pay data.

Employers should be cognizant of this important development and promptly collaborate with human resources, payroll and management personnel to enable them to successfully meet the EEOC’s requirements and applicable deadlines. To best prepare their workplaces to address any future action by the EEOC as a result of the pay data collection mandate, employers can partner with outside counsel to take the following 10 steps:

1. Review any references to compensation in employee handbooks and revise any blanket prohibitions on employees disclosing their compensation to others.
2. Remind supervisors of employees’ limited right to ask their co-workers about compensation.
3. Train compensation decision-makers on equal pay law requirements, any compensation policies including revisions to the same, strategies and procedures for ensuring proper documentation of decision-making relative to compensation decisions, and the EEOC’s new pay data mandate.
4. Review job descriptions and current salaries to reflect actual jobs being performed and properly differentiate between jobs (e.g., avoid similar titles for people doing completely different work).
5. Establish salary ranges for each job classification.
 - o Make clear that any exceptions should be limited to certain enumerated factors and percentages (e.g., skill set, licenses or degrees which demonstrably add value, market constraints such as geography, and difficulty in filling a position).
 - o Ensure hard data justifies any deviation from the salary ranges (e.g., applications received and/or offers rejected).
 - o Provide guidelines to minimize pay negotiations and require careful documentation of any salary negotiations so as not to punish protected groups that generally tend not to negotiate compensation.
 - o Avoid using years of experience alone as a benchmark, unless you can show it adds significant value, as learning curves generally flatten out after a number of years.
 - o Avoid using tenure or seniority alone as a reason for pay.
 - o Value similar work similarly – particularly for non-production jobs.
 - o Be careful with discretionary bonuses.
6. Monitor promotions and raises to ensure they are bias-free.
7. Review overtime and shift arrangements to ensure equity.

8. Ensure telecommuters, part-time and flex-time employees are receiving equal access and opportunity.
9. Monitor compliance by conducting regular (privileged) pay audits tied to compensation increases as well as to determine potential problems.
10. Identify, implement and document appropriate solutions if your pay audit reveals concerns.

Employers that take action now to ensure their workplaces are protected against equal pay claims will be best situated to respond to any EEOC inquiry resulting from the pay data mandate. If the task seems overwhelming, outside counsel can help guide this process to minimize disruption to your business while elevating your workplace's pay equity practices.