



EEOC Preparing to Open EEO-1 Reporting on May 20 – With No Option for Non-Binary Workers: What Employers Can Do to Prepare

Insights

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According to recent administrative documents filed by the Equal Employment Opportunity Commission (EEOC), this year’s collection of EEO-1 reports will begin in less than a month – and will not allow employers to categorize workers as “non-binary.” Private employers with at least 100 employees and federal contractors with at least 50 employees should prepare to sort company data by employee job category, as well as by sex and race/ethnicity, to turn over to the EEOC between May 20 and June 24. While these dates are not yet set in stone, they provide a glimpse into how we can expect this year’s EEO-1 reporting season to go.

Non-Binary Reporting Has Been Permitted For Past 6 Years

Since 2019, the EEOC has guided employers on best practices for filling out their EEO-1 reports and categorizing non-binary employees – those who choose not to identify as male or female. Starting with that year’s filing, employers were permitted to add additional information in a comment dialogue box on the electronic EEO-1 report portal to explain if any workers identified as non-binary.

Trump Executive Order Signaled End to That Practice

But the writing appeared to be on the wall soon after the Trump administration took over. Within hours after Trump took office, he issued an executive order mandating that the federal government recognize only two biological sexes, male and female. We predicted at that time that this would mean a change for the EEO-1 form – and that’s what is about to come to fruition.

Change on the Near Horizon

On April 15, the EEOC filed a public statement indicating it would make a “non-substantive” change to the EEO-1 instruction booklet, and also made public a draft of that annual booklet. In this draft, the instructions for “Reporting by Sex” have been reduced to one sentence:

The EEO-1 Component 1 data collection provides only binary options (i.e., male or female) for reporting employee counts by sex, job category, and race or ethnicity.

The EEOC also sought other “non-substantive” changes, unrelated to the President’s Executive Order, centering around undue hardship, failure-to-file notices, and the removal of an inoperable weblink in a footnote.

Dates

The draft instruction booklet indicates that the proposed 2024 EEO-1 Component 1 data collection season is scheduled to open on Tuesday, May 20, and that the deadline to file will be Tuesday, June 24. While these dates may change, the final opening and deadline dates will be posted on the EEOC’s dedicated website for its EEO-1 Component 1 data collection. We will monitor this situation and post updates as needed

Unanswered Question for Small Federal Contractors

Federal contractors with 50-100 employees are still uncertain whether they will be required to file an EEO-1 this year.

- On the one hand, the proposed instruction booklet reminds private employers with 100 or more employees that Title VII requires them to file EEO-1 reports, and also that OFCCP regulations “require certain federal contractors to file the EEO-1 Component 1 if they have 50 or more employees.”
- However, Trump issued an executive order in January that largely dismantled the decades-old executive order that created the federal contractor obligation to file EEO-1 reports for federal contractors with 50 employees or more.

Until we have further guidance from the EEOC or OFCCP, we cannot be sure whether federal contractors falling in this window will have an EEO-1 filing obligation this year.

No Pay Data Collection on the Table

As we also predicted, the new Trump EEOC has shelved any plans to collect employee pay data, as the Biden EEOC wanted to resurrect with 2024’s reporting. There is nothing in the instruction booklet or the White House’s administrative filings to indicate that pay data collection will be required this year or in any future year.

What Should You Do?

As you prepare to file your EEO-1 reports this year, you can follow our five-step process to begin your work.

1. Pick a Date

Traditionally, EEO-1 reports require employers to pick a payroll end date between October 1 and December 31 as your “workforce snapshot period.” This snapshot period will become the basis of reporting all employees as of that date. The instruction booklet indicates that the EEOC will once again prevent employers from manipulating this date in order to avoid EEO-1 reporting. If you reached 100 or more employees during any point of the fourth quarter of 2024, you will need to file an EEO-1 report.

2. Categorize Your Workforce

Next, ensure that your job titles are categorized correctly and consistently. The EEO job categories are:

(1.1) Executive/Senior-level officials and managers

(1.2) First/Mid-level officials and managers

(2) Professionals

(3) Technicians

(4) Sales workers

(5) Administrative support workers

(6) Craft workers

(7) Operatives

(8) Laborers and helpers

(9) Service workers

3. Collect Employee Data

Given the Trump administration’s Executive Order on DEI and affirmative action, many employers wondered whether the EEOC would still collect race and sex data at all. But the EEOC’s recent public filing confirms that the agency intends to collect this data once again, answering the question of whether you must still collect information from your workforce.

This year, continue to give your employees an opportunity to self-identify their sex and race/ethnicity, and provide a statement about the voluntary nature of the inquiry. If an employee does not self-identify, you have the ability to perform a visual identification and provide your best response.

The race/ethnicity categories are unchanged this year:

- **Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
- **White (Not Hispanic or Latino):** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Black or African American (Not Hispanic or Latino):** A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino):** A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian (Not Hispanic or Latino):** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **American Indian or Alaska Native (Not Hispanic or Latino):** A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.
- **Two or More Races (Not Hispanic or Latino):** All persons who identify with more than one of the above five races.

Again, as opposed to filing instructions from the past six years, only binary options – male and female – for reporting sex will be available in this year’s EEO-1 reporting form, and there will be no option to provide information about non-binary selections.

Finally, talk to your FP attorney about whether you should continue to collect this data for applicants, as the state of the law remains in flux regarding that question.

4. Choose a Point of Contact

Designate an employee as the “account holder” who will file the EEO-1 report through the EEO-1 Component 1 Online Filing System (OFS). Note that there are separate instructions for new filers and for those who are changing their point of contact. Account holders must submit the workforce demographic data electronically in the OFS through either manual data entry or data file upload. The employer’s certifying official must then certify the EEO-1 Component 1 report(s) in the OFS.

5. File on Time!

It appears you will have until June 24 to file – but you can file earlier! In the past, the EEO-1 reporting system has slowed down significantly as the deadline approached, which makes filing more challenging. You might want to allow yourself sufficient time before the deadline so you aren’t scrambling at the last minute with technical challenges. Typically, the EEOC does not provide for extensions.

Conclusion

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Fisher Phillips will continue to monitor any further developments in this area as they occur, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have any questions about filing EEO-1 reports, please consult your Fisher Phillips attorney, the authors of this Insight, or a member of Fisher Phillips' [Affirmative Action and Federal Contract Compliance Practice Group](#) or [Pay Equity and Transparency team](#).

Related People



Sheila M. Abron
Partner
803.740.7676
Email



Jennifer B. Sandberg
Regional Managing Partner
Email

Service Focus

Affirmative Action and Federal Contract Compliance

Government Relations
Pay Equity and Transparency