



# Electronic Alert

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## **EEO-1 Surveys & the Back-and-Forth of Compensation Reporting: Now You Have to Do It**

By Paula Barran

If you are an employer who has to file an EEO-1, we are pretty sure this year's will be harder than last year's.

Do you have to file? You do if you have 100 or more employees, or you are a federal contractor, or first tier subcontractor with 50 or more employees and a contract of \$50,000 or more. You can get to a headcount of 100 if you have an affiliation with another company or operate as a single enterprise where the enterprise employs 100 or more. Check out the EEOC's website to confirm whether you do or don't have to file.

If you don't have to file, the rest of this alert doesn't apply to you. Hope you are having a nice day!

If you have to file the EEO-1, let's talk about *National Women's Law Center v. Office of Management and Budget*, a March 4, 2019 decision from the U.S. District Court for the District of Columbia, and how the EEO-1 is the newest weapon against pay discrimination. In 2016, the EEOC sought approval to require a revised EEO-1 form. This one would include compensation data, mandating employers to include aggregate data for W-2 income and hours worked, in 12 pay bands for the 10 EEO-1 job categories. In 2017, with a new administration in place, the OMB pushed the pause button on compensation data reporting. The National Women's Law Center filed a lawsuit. Compensation data such as the kind that would be provided by the new EEO-1 requirements can be important for an advocacy group to support and fine-tune its analysis and pinpoint places where pay equity is lagging.

There is a lot in the court's opinion about how government works, but it is the result here that matters for employers. The opinion concludes that OMB acted illegally when it stayed the data collection requirements. That conclusion reinstates the data collection rule.

Before the decision was issued, the EEOC had announced that employers may start filing their surveys March 18, 2019, and that the deadline had been extended to May 31, 2019. Now it is anyone's guess whether that will apply, and as of this writing the EEOC website has not reacted to the decision. If you must file the survey, watch for instructions about compensation data reporting and whether there will be an amended deadline. While you are at it, you really need to brush up on how you retain your compensation data. Back in 2016, the idea was to report on compensation by ethnicity, race, and sex in the categories already present on the EEO-1 form. The assumption is that if you have information on a person who fits into a category on the form, you know gender and ethnicity or race sufficiently to report on the person, so you should be able to add the W-2 earnings for that person.

For questions on EEO-1 surveys or compensation reporting requirements, please contact Paula Barran at [pbarran@barran.com](mailto:pbarran@barran.com) or (503) 276-2143.