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EEO-1 Reports Due July 19, 2021 – New State Laws Make Accuracy of Filing More Important Than Ever

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On March 29, 2021, the Equal Employment Opportunity Commission (EEOC) announced the much-anticipated schedule for filing the FY 2019 and FY 2020 EEO-1 Reports. Employers may begin filing the reports on April 26, 2021 and will have through July 19, 2021 to complete their filings. An annual EEO-1 filing is required of most private employers with at least 100 employees and many federal contractors and first-tier subcontractors with at least 50 employees. This year, two reports are required because the EEOC extended the filing deadline for the FY 2019 report due to the COVID-19 pandemic.

While timely filing accurate EEO-1 reports has always been important, California and Illinois recently enacted pay equity filing requirements that are based on the EEO-1 reports and it is likely that more states will follow. Starting this year, private employers with at 100 employees in total and at least one employee working in California need to file annual pay data reports. The reports due under the new California law use the EEO-1 job categories as the base for reporting aggregate hours and wages by sex and race/ethnicity. The California reports are due March 31st of each year. In contrast, the new Illinois law relies heavily on the actual EEO-1 filings. Starting on January 1, 2023, corporations required to file an annual report with the Illinois Secretary of State who also file EEO-1 reports will need to include their EEO-1 information in the annual corporate filing. The EEO-1 results will be published on the Secretary of State's webpage. Then, no later than March 23, 2024, private employers with 100 or more employees in Illinois will need to file with the Illinois Department of Human Rights their most recent EEO-1 reports and provide a list of Illinois employees by EEO-1 job category, race, sex, annual wages, and hours. The Illinois filing also requires certification that average wages for female and minority employees are not consistently below the average wages of their male and non-minority counterparts, considering factors legitimately influencing pay. Covered

Illinois employers need to obtain renewal certificates every two years. We strongly encourage Illinois employers to consider conducting an analysis of their pay data by reporting location and EEO-1 category, *under attorney client privilege*, well in advance of the Illinois filing deadline so that they can eliminate data errors and address any pay discrepancies before filing for equal pay certification. See our alerts about the new California and Illinois laws for further information.

As a good business practice, the growing emphasis on pay equity evaluations, and both California and Illinois leveraging EEO-1 reports as the basis for their pay equity filings, all employers subject to the EEO-1 filing requirement should consider taking the following steps:

- If you did not pull the FY 2019 data into a separate file at the beginning of 2020, pull that data as soon as possible and carefully audit it to be sure it accurately reflects the employees and job assignments as of the payroll period between October and December 2019 that you will use as your snapshot period for the report.
- Be sure that your EEO-1 reports include all required workers and omit any workers that are not required to be included. For example, employers must include all full-time employees, part-time employees, employees on leave or furlough, and employees that telework who were on the company's payroll during the snapshot period. A person is considered an employee if they count as an employee for the purpose of the company's withholding of Social Security Taxes. Insurance agents are also considered employees for EEO-1 purposes. Special consideration should be given to the treatment of Leased Employees and temporary employees from staffing agencies.
- Consider auditing the EEO-1 job categories to which each job is assigned if you have not done so in the past few years. Because federal affirmative action programs use EEO-1 job categories in designing job groups and the Office of Federal Contract Compliance Programs considers EEO-1 category in auditing compensation practices, federal contractors should have a regular practice of reviewing EEO-1 job category assignments. Employers in California and Illinois should also begin regular reviews.
- Keep updated on emerging state pay equity filings requirements and states where you have remote workers. California requires filings for even one worker in the state, and any state that models a new filing on California may well do the same.
- If you have employees in a state that uses the EEO-1 report as a basis for pay equity filings, consider instituting an annual audit comparing each year's roster of employees with the prior year to be sure that changes are explained by data in the HRIS system. For example, if an employee is in the filing for FY 2020 and is not in the data pull for FY 2021, be sure that employee has a termination record with a date between the two data pulls. If your company has a vendor to do affirmative action programs, they may be able to assist you with this audit.

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