

AFFIRMATIVE ACTION UPDATE

**** NEWS FLASH ****

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Douglas B. Brown, LLC

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NEW EEO-1 REPORT

“SHOULD I STAY OR SHOULD I GO?”

In August 2016, after extensive debate, the EEOC announced the implementation of a revised EEO-1 Report requiring the reporting of W-2 compensation data by EEO-1 Category. This will be further broken down by gender and race/ethnicity, and reported by twelve (12) different salary bands. The report also requires the reporting of total hours worked. Employers will now be required to report on all employees who worked during the reporting period, not just those who were employed as of the date of the data snap-shot.

For 2017, the snap-shot may capture the data at any time between October 1 through December 31, 2017. The 2017 report will be due March 31, 2018.

The question now is what, if anything, should employers be doing to prepare for the new report? And the answer is, not surprisingly, it depends.

Any discussion of the EEO-1 reporting requirement must recognize the reality that the future of the report is completely uncertain. Implementation of the report occurred over the strenuous objections of the contractor community, the National Academy of Sciences, the U.S. Chamber of Commerce, SHRM, the National Association of Manufacturers, and the National Federation of Independent Businesses. The election of Donald Trump and the nomination of Andrew Puzder as Secretary of Labor makes the future of the revised report unclear.

The contractor community would like to see the revised report eliminated. Given the upcoming change in administrations, this outcome is not out of the question. Other options are changes to the report (reporting base earnings instead of W-2 earnings which would also eliminate the need to report hours worked) or leaving the report as it was.

Given the uncertainty surrounding the report, what should contractors be doing now?

The options appear to be:

- Proceed as if the revised reporting requirement will go away.
- Proceed cautiously by taking some preliminary steps, but not going too far down the road while waiting to see what will happen after the new administration is in place.
- Proceed as if compliance with the revised reporting requirements will not change.

Our recommendation is to wait for the first 100 days of the new administration to get a sense as to whether it will act on rolling-back employment-related executive orders, new regulations, and other initiatives of the outgoing administration, including the new EEO-1 Report. This will take things to May 1, 2017, eight months before data will have to be pulled and eleven months before the report will have to be filed.

At that point, if the revised EEO-1 report is reversed, no further action will be required.

If the report is not totally reversed, but there is an indication of some modification, employers can begin a phased-in approach by taking preliminary steps to ascertain their ability to populate the data fields required by the report. This will require an analysis of HRIS, payroll, and timekeeping systems to determine the sources of the data as well as the ability to pull and consolidate the data for reporting purposes. Finally, if the report is not reversed nor is there any indication that action will be taken to reverse the changes, covered employers can proceed to fully comply.

The decision as to which course of action is right for you is a business decision that includes an assessment of your tolerance for risk; your comfort level with the current state of your data; and your confidence that your systems will be able to produce the data (if so required) without any major issues or hiccups.

Attached for your review and information are copies of the [Q&A regarding the report](#); the [2017 EEO-1 Instruction Booklet](#); and the [Data File Layout Components](#). We recommend looking over these documents to become familiar with the new reporting requirements.

If you would like to discuss the reporting requirements in more detail as they apply to your specific organization, please do not hesitate to give us a call.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. The discussion of this matter is for the clients and friends of Douglas B. Brown, LLC and does not represent nor is intended as a substitute for professional legal advice.