



EEO-1 Bootcamp

From Data Pull to FOIA Response

Today's Agenda

- 1. The Who, What, When and Where of the EEO-1 Report**
- 2. What Information Do I Need and Where Do I Find It?**
- 3. Garbage In, Garbage Out or: How I Learned to Stop Worrying and Love Data Validation**
- 4. How to File Your Information and How to Avoid Potential Problems**
- 5. How to Protect Your Information If Someone Asks to See It**





The Who, What, When, and Where of the EEO-1 Report

The Who: Who Must File

- **Employers Who Are NOT Required to File an EEO-1 Report:**
 - Private employers with fewer than 100 employees
 - Federal contractors and subcontractors with fewer than 50 employees
- **Employers Who Are Required to File Only Component 1 (the “Old” EEO-1 Report):**
 - Federal contractors and subcontractors with 50-99 employees
- **Employers Who Are Required to File Both Component 1 and Component 2 (the “New” EEO-1 Report):**
 - Private employers with 100 or more employees



The Who: Who Must Be Included

Must Be Included

- Any individual on your payroll for whom you handle withholding
 - Full time employees
 - Part time employees
 - Contractors
 - Leased employees if YOU handle their payroll, staffing, benefit payments, etc.

Should Not Be Included

- Leased employees if the employment agency handles payroll, staffing, benefits, etc.
- Employees hired on a casual basis for a specified time or the duration of a specified job
- Temporary employees in any industry other than construction



SALSA
Strategy, Access, & Leadership in San Antonio



The What: What to Report

- **The EEO-1 requires companies to report employment data categorized by:**
 - Race/Ethnicity
 - Gender
 - Job Category
 - Summary Pay
 - Aggregate Hours Worked
- **Single establishment employers only need to file one report, but multi-establishment employers must file:**
 - One Report for the Entire Company (Type 2)
 - One Report for the Headquarters Location (Type 3)
 - One Report for Each Location with 50 or More Employees (Type 4)
 - Either One Report for Each Location with Fewer than 50 Employees (Type 8)
 - Or One Report for All Locations with Fewer than 50 Employees and a Headcount Report for Each Location with Fewer than 50 Employees (Type 6)



The When: When to Collect Data and When to File

- **Beginning with the 2017 filing cycle, you will need to file your EEO-1 Report by March 31 of the next year**
- **Your report headcounts must be based on payroll data from October 1 to December 31**
 - **You can pick any pay period during this three month window**
- **Your pay and hours worked report must be based on one full year of data**
 - **You should report the total number of employees who worked in each pay band in each job category and the total number of hours that those employees worked during the year**





The Where: Where to Send the Information

- Employers must submit EEO-1 reports online using the system available at <https://www.eeoc.gov/employers/eeo1survey/>
- You will have the option of either manually entering the information into a grid similar to the one below or uploading a data file prepared according to certain specifications

Job Categories	Annual Salary in Thousands	Number of Employees (Report employees in only one category)														Total Col A-N
		Race/Ethnicity														
		Hispanic or Latino		Non-Hispanic or Latino												
				Male						Female						
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		
Executive/Senior Level Officials and Managers 1.1	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$82,919															
	7. \$82,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															



What Information Do I Need and Where Do I Find It?

What Information Do I Need

- **For the EEO-1 Survey System You Need the Following Information:**
 - Email address of the person who registered the company
 - Company number assigned by the EEOC
 - Password assigned by the EEOC
- **For Each Location for Which You Will Be Filing an EEO-1 Report You Need the Following:**
 - Location address (including the county and zip code)
 - Establishment number assigned by the EEOC
 - EIN with which the establishment is affiliated



What Information Do I Need

- **For Each Employee You Need the Following Information:**

- **Race/Ethnicity**
- **Gender**
- **Job Category**
- **Work Location**
- **Annual W-2 Salary**
- **Annual Hours Worked**



Where Do I Find the Information

- **The login information needed for the EEO-1 Survey System should be sent to the registered official at your company each year**
 - If necessary, you can retrieve the information from the login page available at <https://egov.eeoc.gov/eeo1/login.jsp>
- **The location information needed should be available within your company information systems with the exception of the establishment number assigned by the EEOC. This information can be downloaded from the EEO-1 Survey System once you have logged in**
- **The employee information needed should be available in your HR, Payroll, and Timekeeping Information Systems**



Where Do I Find the Information

- **The employee information needed should be available in your HR, Payroll, and Timekeeping Information Systems**
- **A few important things to remember:**
 - **If you are missing race/ethnicity or gender for any employees, the best practice is to ask them to self-identify using an approved self-identification form**
 - **The race/ethnicity, gender, job information is based on the information contained in the payroll snapshot taken between October and December, the pay and hours worked information is based on all pay and hours to that point in the year**
 - **The hours worked that you report should exclude hours for vacation, sick days, paid time off, leave, etc.**





Garbage In, Garbage Out or: How I Learned to Stop Worrying and Love Data Validation

Preparing Your Data: Now That I Have the Data What Do I Do

- Unfortunately, even the most careful employer will inevitably have holes in its data that will need to be filled in
 - Missing or incorrect race/ethnicity or gender information
 - Missing or incorrect job category information
 - Missing or incorrect salary information
 - Incorrect hour types included in hours worked information
- First, identify and plug the holes in each of the spreadsheets
 - If you're missing demographic information, ask employees to self-identify using an approved form
 - If you haven't audited your jobs recently, you should use the link below to ensure that categories are correctly assigned:
 - <https://www.eeoc.gov/employers/eeo1survey/jobclassguide.cfm>
 - If your timekeeping system tracks all hours, make sure to remove those that do not fall within the FLSA definition of hours worked



Preparing Your Data: Now That I Have the Data What Do I Do

Important Considerations for Plugging the Holes

Job Categories

- Should I really have that many people in Executive/Senior Level Officials?
- Is this person actually a manager or do they just have 'manager' in their title?

Race/Gender Identification

- What are my options if people declined to self-identify?
- Where do I put people who identify as both Hispanic and Black?

Minimizing Risk of Litigation

- Am I doing everything I can to keep this data confidential?
- Am I limiting my data collection to the US?
- Do all of my self-identification forms have disclaimer language?



Preparing Your Data: Now That I Have the Data What Do I Do

- **Second, merge all of the spreadsheets into a single location**
 - Whether you choose to manually enter information into the grid or upload the file to the EEOC you will need to have everything together
 - Once you have merged the spreadsheets you will need to fill in any gaps that occurred as part of the merging:
 - Establishment numbers that did not map to an establishment address
 - Establishments that did not map to an EIN
- **Third, fill in information that will make the filing process easier:**
 - Is this a headquarters report, an establishment with 50 or more employees, or an establishment with less than 50 employees
 - Is this a new establishment or one that has been filed in previous years
 - The amount of information that you fill in will differ depending on whether you are manually entering information into the grid or uploading the file to the EEOC



Preparing Your Data: Now That I Have the Data What Do I Do

- **Fourth, ensure that employees are assigned to the correct establishment**
 - **Employees should be reported in the establishment in which they sit**
 - **Telework or remote employees should be reported in the establishment in which their manager sits**
 - **Employees who work at multiple establishments should be reported in the establishment in which they sit the majority of the time**
- **Fifth, if you are manually entering the information, prepare a table with the information which mirrors the grid in the EEO-1 Survey; if you are uploading the file, ensure that the data is arranged according to the data specifications in the link below:**
 - **<https://www.eeoc.gov/employers/eeo1survey/2017-data-file-layout.cfm>**





How to File Your Information and Avoid Potential Problems

Filing Your Data: How to Navigate the Quirks of the EEO-1 System

- **Now that you have your data file prepared, you can login to the EEO-1 Survey and upload the data file**
 - If the upload doesn't return errors you are ready to certify the reports
 - If the system finds errors you will need to fix these and try the upload again
- **A few common errors:**
 - Column contains too few or too many characters
 - Column is formatted as text rather than a number or vice versa
 - Total employees does not equal the sum of individual employees
- **The other problem that you may face is that the system may find warnings in your data**
 - May occur when an establishment headcount has risen/fallen by 25%
 - These must be fixed by manually entering the reports into the grid



Filing Your Data: How to Navigate the Quirks of the EEO-1 System

- If you've chosen to fill in the information manually, thank you for bearing with us while we talked about the quirks of the data upload process, but don't feel left out because the manual entry system has one **BIG** quirk of its own
 - No matter which filing method you choose, you'll be asked to answer the following question for each establishment:
 - Does the company or any of its establishments (a) have 50 or more employees **AND** (b) is not exempt as provided by 41 CFR 60-1.5, **AND** either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract. or purchase order amounting to \$50,000 or more, or (2) serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes?
- This may seem like a very straightforward question and for some employers it is, but answering it incorrectly can have **BIG** consequences



Filing Your Data: How to Navigate the Quirks of the EEO-1 System

- **The EEOC shares the information that it collects in connection with the EEO-1 Survey with other federal agencies**
 - **One such agency is the Office of Federal Contract Compliance Programs (OFCCP), which enforces affirmative action and nondiscrimination requirements on federal contractors**
 - **The answer to the question you just saw (colloquially known as Question C3), is one of the primary methods that the OFCCP uses to select facilities for compliance reviews**
- **Many companies don't just operate under one EIN, but rather have separate EINs for each subsidiary**
 - **Some of these subsidiaries may need to answer "Yes" to the question, while some may need to answer "No"**



Filing Your Data: How to Navigate the Quirks of the EEO-1 System

- Again this may seem like a very straightforward situation, but the quirk in the EEO-1 Survey system that makes it complicated
 - After you've entered information into the grid for an establishment, you will click through to a page which features Question C3. If you answer "Yes" the system will automatically default every EEO-1 Report to "Yes"
 - The only way to correct this is to go in and manually change the reports that are not affiliated with a government contract to "No"
- The pains of an OFCCP audit could be a presentation unto itself, but for our purposes its safe to say that you don't want to open any more of yourself up to one than necessary
 - Do Not Incorrectly Identify Establishments as Contractors
 - Do Not Unnecessarily Combine Establishments
 - If two subsidiaries with separate EINs both work at one establishment, file them as separate reports especially if one is a government contractor and one is not





How to Protect Your Information if Someone Asks to See It

How to Protect Your Information If Someone Asks to See It

- All EEO-1 Reports are subject to the confidentiality provisions of Section 709(e) of Title VII, and may not be made public by the EEOC prior to the institution of any proceeding under Title VII involving the EEO-1 data
 - Any EEOC employee who violates this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned
 - This does not apply to the OFCCP or its employees
- OFCCP will notify contractors of any FOIA requests that are made to obtain EEO-1 reports, and will refer FOIA requests on filers not within its jurisdiction to the EEOC for a response.



How to Protect Your Information If Someone Asks to See It

- **The OFCCP FOIA Process:**

- **Third party sends a request for the company's EEO-1 Reports**
- **OFCCP sends the company a letter advising of the request and providing it with the opportunity to object to release**
- **The company responds with its objections**
- **OFCCP evaluates the objections and withholds or releases the reports**

- **FOIA Exemption 4 protects confidential business information such as trade secrets or commercial and financial information**

- **Such information is protected if it (1) relates to a business or trade in which the submitter has a commercial interest or deals with money, (2) was obtained from a person, includes individuals, corporations, state/foreign governments, but not Federal government, and (3) that it is covered by the attorney-client, work product, or deliberative process privileges or if release would cause substantial harm to the competitive position of the submitter.**



How to Protect Your Information If Someone Asks to See It

- **The OFCCP's notification system is far from perfect, but there are a couple of steps that you can take to protect your information:**
 - **Ensure that the company official listed on your EEO-1 reports is aware that such notifications may be sent**
 - **If a request is received, promptly notify your legal department and/or outside counsel for assistance**
- **Any objections should address the following:**
 - **What specific information in the document do you consider to be a trade secret or commercial information?**
 - **How would disclosure be valuable to your competitors?**
 - **To what extent is this information known to the public or your competition in products, articles, patents, or other means? If known, why would release still be competitively harmful?**
 - **What steps have you taken to protect the confidentiality of the data?**



How to Protect Your Information If Someone Asks to See It

- **A Sample Response May Look Like This:**

- **Information would provide competitors with information about important aspects of the company's operations and development of its workforce during those years**
- **Reports show how the company's workforce has changed in specific job categories, including the sites and positions where there has been growth or contraction. Growth or reduction in certain positions could allow competitors to gauge success of the company's business and product development**
- **By studying and comparing the reports for each year, competitors could identify and track other workforce fluctuations, including recruiting patterns, and rates of attrition**
- **The company assures its employees that the information that they voluntarily provide for the report will be kept confidential**
- **In those job categories with few employees, such as Officials and Managers, disclosure may reveal how certain people identified themselves**





SALSA
Strategy, Access, & Leadership in San Antonio



Questions?

Contact Information:

Mike Childers

(312) 460-5222

mchilders@seyfarth.com