

The Future of EEO-1 Reporting: EEOC Proposal Creates Compliance Questions

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Every September, HR departments at employers with 100 or more employees have turned to the same task: pulling a fourth-quarter payroll snapshot, sorting the workforce into ten job categories, coding each employee by race, ethnicity, and sex, and filing the result with the Equal Employment Opportunity Commission. The EEO-1 report has been a fixture of federal workplace compliance since 1966. By regulation, it is due no later than September 30.

This September, employers are in an unusual position. The regulation still says the report is due. The agency that enforces the regulation has proposed eliminating it. And as of early September, the EEOC's data collections page still reads "The 2024 EEO-1 Component 1 Data Collection is CLOSED," with a promise that updates on the 2025 collection will be posted "as they become available." The portal that would allow anyone to comply with the September 30 deadline has not opened, and no filing window has been announced.

Welcome to compliance in the interregnum.

What the EEOC Has Proposed

On July 21, 2026, the Commission voted 2-1, along party lines, to issue a proposed rule rescinding the EEO-1 report along with its counterparts for unions (EEO-3), state and local governments (EEO-4), public school systems (EEO-5), and higher education. The proposal also would eliminate the recordkeeping and record-preservation requirements that supports those reports.

The Commission's stated rationale goes further than a burden argument, though the burden numbers are real: the EEOC's own 2023 estimate put annual compliance at roughly \$273 million and more than five million reporting hours. The proposal also states that the Commission has preliminarily determined the reports are inconsistent with equal employment opportunity law and potentially unconstitutional, on the theory that collecting race and sex data absent a specific allegation of discrimination sits in tension with Title VII's colorblind mandate. That framing matters. An agency that has said its own form may be unconstitutional is not likely to reverse course on the strength of comment letters.

The proposal was published in the Federal Register on July 23, 2026, opening a 30-day comment period that closed on August 24, 2026. A public hearing was held on August 11, 2026. The next step is a final rule, which may or may not track the proposal and may or may not arrive before September 30, 2026.

What Has Not Changed

This is the part employers tend to skip past, and it is the part that matters.

The regulation is still on the books. A proposed rule has no legal effect. Until a final rule is published and takes effect, 29 C.F.R. § 1602.7 continues to require covered employers to file. The EEOC may resolve the tension by opening the portal, by announcing a delay, or by finalizing the rescission. It has not done so yet, and employers should not assume that silence equals relief.

The data is still required for other purposes. Even if the EEO-1 disappears tomorrow, the EEOC retains authority to request workforce demographic information in the course of a charge investigation or enforcement action. An employer that stops collecting the data because it no longer has to report it will find itself unable to respond when the same agency asks for it in a narrower, higher-stakes context.

State law is unaffected. California's pay data reporting regime applies to employers with 100 or more employees and at least one California employee, and its 2026 amendments tightened storage rules and penalties. Massachusetts requires large employers to submit a copy of their federal EEO-1 to the Commonwealth. Illinois has its own equal pay certification process. None of these depend on the federal report continuing to exist, and several assume that the underlying data will be maintained.

The federal contractor threshold is already gone. The separate obligation for federal contractors with 50 to 99 employees was tied to Executive Order 11246, which was revoked in 2025. Contractors of that size filed anyway last cycle out of caution. Going forward, the 100-employee threshold is the operative one for everybody, regardless of what happens to the rescission.

The Quieter Risk: Losing the Data You Need

There is a tendency to view the EEO-1 purely as a reporting burden. It is also, for many employers, the only structured demographic dataset the organization maintains. That dataset does work unrelated to the EEOC.

Consider the reduction in force. An adverse impact analysis, the statistical check on whether selection criteria disproportionately affect a protected group, depends on knowing the demographics of the workforce before and after. Employers that conduct that analysis do so because it is the single most effective way to identify a problem before a plaintiff's expert does. Employers that stop collecting the data lose the ability to run it.

The same is true of pay equity reviews, promotion analyses, and the internal audits that support a good-faith defense when a pattern-or-practice claim arrives. The EEOC's proposal does not change the substantive law. Title VII, the ADA, GINA, and the Pregnant Workers Fairness Act remain fully in force. The proposal changes only whether the government collects the data in advance. It does not change whether the data will matter when a dispute arises.

The Practical Takeaway

For September, the guidance is unglamorous:

Prepare to file. Have the Q4 2025 snapshot data ready in filing format. If the portal opens with a short window, as it has in recent years, employers who waited for certainty will be scrambling.

Do not stop collecting. Maintain self-identification processes and keep the demographic dataset current. Store it separately from personnel files, restrict access to those with a legitimate need, and make sure it does not flow to hiring or promotion decision-makers. That last point addresses the Chair's concern directly, and it is good practice regardless of what happens to the report.

Inventory your state obligations. Determine which state and local reporting or certification regimes apply to your footprint and confirm that your data collection satisfies them independently of the federal form.

Watch for the final rule, and for what follows it. A final rescission may draw litigation. It may also draw a Congressional Review Act resolution, though that would require a presidential signature to take effect. Employers should expect the landscape to shift

again before it settles.

Sixty years is a long run for any government form. The EEO-1 may be nearing its end. But the questions it was designed to answer, about who works where and whether the numbers tell a story, are not going anywhere. Employers who treat the rescission as permission to stop asking those questions are trading a reporting obligation for a litigation one.