

Evaluation of Compensation Data Collected Through the EEO-1 Form

EEO-1 Coverage of Protected Vulnerable Groups

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for preventing discrimination and pursuing enforcement actions against employers that discriminate against a job applicant or employee because of the person's sex (including gender identity and sexual orientation), race, age (40 or older), or disability. As one of its tools for deciding whether to pursue an investigation of private employers and federal contractors that meet certain criteria, EEOC conducts an annual EEO-1 survey collecting counts of employees by sex, race/ethnicity, and occupation. For 2017 and 2018, EEOC also collected data on employees' pay and hours worked (known as Component 2).

In 2020, EEOC asked the National Academies of Sciences, Engineering, and Medicine to examine the quality of these data and provide recommendations for future data collection efforts. The panel's report, *Evaluation of Compensation Data Collected Through the EEO-1 Form*, offers recommendations on the quality of data as collected for its intended purpose and recommendations for future pay data collections.

This issue brief covers the panel's findings and recommendations regarding the utility of the EEO-1 pay data to inform EEOC's initial investigations of pay differences among protected groups.¹

¹ The panel also provides recommendations regarding the data's utility for employer self-assessment, national comparisons, and for protecting vulnerable groups.

FINDINGS

The Race/Ethnicity Measures Are Imprecise

For race/ethnicity, the form collects the data in seven categories: Hispanic or Latino, White, Black or African American, Native Hawaiian or Other Pacific Islander, Asian, American Indian or Alaska Native, and two or more races. The panel found this definition does not permit distinguishing among Hispanics of different races in the dataset, which limits the utility of the data for examining pay differences. Further, the definition used by EEOC does not correspond to the federal standard, limiting the utility of data to examine similarly situated employees using data from other federal surveys as benchmarks.

The Measures of Sex Are Incomplete

For sex, the EEO-1 form distinguishes only between males and females. Employers are instructed to use the remarks section of the survey to provide additional information, such as non-binary status.

In 2019, the U.S. Supreme Court held that any employer's action based on an employee's sexual orientation or transgender status violates the prohibition on discrimination because of sex of Title VII of the Civil Rights Act. This ruling means that EEOC's authority to identify and address pay inequities was expanded to include LGBTQIA+ people.² The agency

² This inclusive term covers people who identify as lesbian, gay, bisexual, transgender, queer, intersex, and other non-binary characterizations.

followed the ruling with a clear statement that the law forbids sexual orientation and gender identity discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other employment term or condition.

Other Protected Groups Are Overlooked

The panel notes that other protected categories of employees are not currently included in the EEO-1 data collections. These include persons age 40 and older, persons with disabilities, and veterans. Including measures of these groups could assist EEOC's enforcement responsibilities. Data on some of these groups (such as age) should be readily available to employers. However, data on other groups may be inconsistent or unavailable, and obtaining them may sometimes also raise privacy issues that could make it difficult for employers to collect and maintain the data.

Legitimate Factors Are Not Included

Pay differences can be attributable to legitimate nondiscriminatory factors, such as seniority, merit, and incentive systems. Indeed, the panel was informed during its open meetings by employer stakeholders that employers' self-assessments of pay differences must account for factors such as employee education, performance ratings, changes in work duties, assignments, location, and work experience in order to properly evaluate pay disparities.

RECOMMENDATIONS

The panel provided a series of recommendations to improve the utility of EEO-1 pay data to protect vulnerable groups under EEOC's authority. Implementation of these recommendations, as well as others detailed in the panel's full report, also will improve the quality of EEOC data for other purposes.

The panel notes that some measurement areas, such as race/ethnicity, are more mature than others. For example, there are not yet established federal standards for collecting data on LGBTQIA+ status, and employers' collecting of such data raises important privacy issues. Disability status may be unavailable to employers, and collection also may present privacy issues. In several measurement areas, the panel urges EEOC to work with other federal agencies to develop and test appropriate measures. The panel recommends that all changes to the EEO-1 questionnaire be tested to maximize accuracy and minimize burden prior to implementation.

EEOC should update instructions to filers to conform to the federal standard on measuring race/ethnicity. This standard offers solutions for reporting race/ethnicity data in a combined format. [Recommendation 3-5]

EEOC should work with other federal agencies to develop and test ways to measure employees' sex, gender identity, and sexual orientation in a manner appropriate for EEOC data collections. [Recommendation 3-6]

EEOC should explore the measurement of pay gaps for additional groups protected under its authority or policy equities, including persons age 40 and older, persons with disabilities, and veterans. To do this robustly while minimizing respondent burden, other federal data collections measuring pay of these groups, such as the American Community Survey, may be instructive. [Recommendation 3-10]

EEOC should work with employer groups and federal data collection agencies to explore ways to collect individual-level data, such as education, job experience, and tenure, which will support detailed pay-disparity analyses and employer self-assessments. [Recommendation 3-11]

PANEL ON THE EVALUATE THE QUALITY OF COMPENSATION DATA COLLECTED FROM U.S. EMPLOYERS BY THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION THROUGH THE EEO-1 FORM **William M. Rodgers III** (*Chair*), Federal Reserve Bank of St. Louis; **Paul P. Biemer**, RTI International; **Lisa Catanzarite**, UNITE-LA and Associate of Chamber of Commerce Executives; **Siwei Cheng**, New York University; **Rebecca Dixon**, National Employment Law Project; **Lisette Garcia**, The Pennsylvania State University; **Claudia Goldin**, Harvard University; **Judith K. Hellerstein**, University of Maryland; **Elizabeth Hirsh**, University of British Columbia; **M.V. Lee Badgett**, University of Massachusetts; **Kristen M. Olson**, University of Nebraska-Lincoln; **Donald Tomaskovic-Devey**, University of Massachusetts; **Valerie Rawlston Wilson**, Economic Policy Institute

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FOR MORE INFORMATION

The Issue Brief was prepared based on the Consensus Study Report *Evaluation of Compensation Data Collected Through the EEO-1 Form* (2022). Copies of the Consensus Study Report are available from the National Academies Press at www.nap.edu. Recordings of the workshops organized by the committee are available on the National Academies website at <https://www.nationalacademies.org/our-work/panel-to-evaluate-the-quality-of-compensation-data-collected-from-us-employers-by-the-equal-employment-opportunity-commission-through-the-eeo-1-form>.

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