

PUBLICATION

Gender Diversity in EEO-1 Reporting? Not Yet.

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After delaying the opening of the 2019 EEO-1 Component 1 data collection because of the COVID-19 pandemic, the EEOC has announced that the 2019 and 2020 EEO-1 Component 1 data collection are now open. Eligible employers have until Monday, July 19, 2021 to submit two years of data. For more information about this year's reporting requirements for various data collection components, visit the EEO site here.

Many employers are asking how to report employees' non-binary gender designations. The answer is not evident yet. However, regarding EEO-1 reporting, the EEOC has indicated the following in one of its FAQs regarding EEO-1 Component 1 data collection:

FAQ 20. Our company is now collecting gender beyond the male/female binary. We would like to report this for the EEO-1 Component 1 2019 and 2020 data collection. How do we report it?

Filers may choose to report employee counts for non-binary gender employees by job category and race/ethnicity in the comment box on the Certification Page in the EEO-1 Component 1 Online Filing System. Please preface this data with the phrase "Additional Employee Data:". For example, "Additional Employee Data: 1 non-binary gender employee in Job Category Administrative Support Workers; Race/Ethnicity: White (Not Hispanic or Latino). 3 non-binary gender employees in Job Category Professionals; Race/Ethnicity: Employee 1 – Black or African American (Not Hispanic or Latino), Employee 2 – Hispanic or Latino, Employee 3 – Two or More Races (Not Hispanic or Latino)."

We suspect that under the Biden administration – particularly in light of his Executive Orders related to diversity, and in light of the Supreme Court's decision in *Bostock v. Clayton County*, a 2020 decision that made it unlawful under Title VII for employers to discriminate against an individual because of his or her sexual orientation or transgender status – we may start to see some movement in the various agencies on these type of reporting issues. In the meantime, employers may follow FAQ No. 20, or use "observation" to report gender status.