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EEO-1 Report Expanded

Information required for the Employer Information EEO-1 Report is on the precipice of expansion.

As background, the **EEO-1 Report** is a compliance survey mandated by federal law and required to be filed with the Equal Employment Opportunity Commission (EEOC). It requires affected entities to report employment data by race or ethnicity, gender and job category; this is referred to as Component 1 data. The EEO-1 reporting of Component 1 data for 2018 is required to be filed by May 31, 2019.

The EEO-1 Report is required to be filed by:

- Employers subject to Title VII of the Civil Rights Act who employ 100 or more employees. In determining employer size, all employees employed by members of affiliated or commonly controlled entities are counted.
- Federal government contractors and certain subcontractors with 50 or more employees and whose prime contract or subcontract amounts to $50,000 or more.

In 2016, the EEOC proposed to expand the EEO-1 Report to require employers to also include salary information reported on their employees' W-2, together with hours worked. This is referred to as Component 2 data to the EEO-1 Report (*note: Component 2 data is not required to be filed by federal contractors employing between 50 and 100 employees*).

However, the Office of Management and Budget challenged the inclusion of the Component 2 data, resulting in a civil action *(National Women's Law Center, et al., v. Office of Management and Budget*, et al., Civil Action No. 17-cv-2458 (D.D.C.). The EEOC regulations were stayed prior to the date they were to take effect. In March 2019, the District Court, who imposed the stay, directed the EEOC to prepare to collect two years of data, due by September 30, 2019. The EEOC filed an appeal of the Court's decision on May 3, 2018; however, until the matter is settled, EEO-1 filers are obligated to submit Component 2 data.

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The EEOC expects to collect 2017 and 2018 data in mid-July, which will be due September 30, 2019. Component 1 data from 2018 must continue to be submitted through the current EEO-1 portal through May 31, 2019.

What should an employer do?

Employers subject to this reporting obligation should keep an eye on **EEOC webpage** for developments. In addition, employers should work with their payroll vendors, as well as their legal counsel to ensure proper implementation of the report. Employers will also want to make certain that this additional sensitive data be handled with caution.

IRS Expands Self-Correction Program

The IRS' Employee Plans Compliance Resolution System (EPCRS) provides three types of programs available to retirement plan sponsors for correcting operational and other types of plan failures. These programs are known as the:

- *Self-Correction Program (SCP)* which allows plan sponsors to correct certain plan failures without contacting the IRS or paying a user fee;
- *Voluntary Correction Program (VCP)* for correcting failures with IRS approval that cannot be self-corrected; and
- Correction on *audit program (Audit CAP)* wherein failures that cannot be corrected through the SCP or VCP are identified on IRS audit and require correction and possible fees by the plan sponsor.

Recently, the IRS expanded certain aspects of the Self-Correction Program (**Rev Proc 2019-19**). Specifically, the self-correction program has been expanded to resolve loan failures, operational failures, and plan document failures.

Failures involving plan loans can be corrected through the SCP in instances such as when:

- The loan does not meet exception criteria, or the loan is in default status;
- Spousal consent for the loan was not obtained; or
- The number of loans exceeds the allowed amount permitted by the plan.

Operational failures and plan document failures can now be corrected through the self-correction program. With regard to plan document failures, a self-correction for a retroactive amendment is permitted, but only if a favorable determination letter is in place for the plan, and as long as the correction is accomplished within a specific timeframe, generally, by the close of second plan year following the year of the failure. The plan sponsor must be able to show compliant policies and practices.

Changes made by this guidance became effective on April 19, 2019. Additional information about these changes and correction programs is available on the **IRS website**.

Adjusted Penalties for Violations of HIPAA Privacy, Security and Breach Laws

Enforcement of the HIPAA privacy, security and breach notification rules is delegated to the HHS Office for Civil Rights, in collaboration with the U. S. Department of Justice. There are four tiers of civil penalties that could be imposed upon covered entities, as defined by the HIPAA Administrative Simplification laws in the event of any HITECH violations relating to breach of medical information. HHS recently **revised** the amounts of potential penalties, which took effect on April 30, 2019.

Categories of Violations and Respective Penalty Amounts			
Violation Category	*Minimum Penalty/Violation*	*Maximum Penalty/Violation*	*Annual Limit*
Did not know a violation occurred	$100	$50,000	$25,000
Violation due to reasonable cause and not willful neglect	$1,000	$50,000	$100,000
Violation due to willful neglect but corrected	$10,000	$50,000	$250,000
Violation due to willful neglect and not corrected	$50,000	$50,000	$1.5 million

Medicare Part D Prescription Drug Adjustments for 2020

The Centers for Medicare and Medicaid Services have released the **2020 adjustments** *(note Attachment V)* for Medicare Part D prescription drug benefits. Following are select modified limits relating to the standard drug benefit and the retiree drug subsidy.

Medicare Part D Prescription Drug Benefits *Standard Benefit Design*		
	2020	**2019**
Deductible	$435	$415
Initial coverage limit	$4,020	$3,820
Out-of-pocket Threshold	$6,350	$5,100

Medicare Part D - Standard Benefit Design, cont'd		
	2020	2019
Maximum Cost Sharing in Catastrophic Coverage Portion of Benefit:		
◆ Generic/Preferred Multi-Source Drug	$3.60	$3.40
◆ Other	$8.95	$8.50
Retiree Drug Subsidy Amounts		
	2020	2019
Cost Threshold	$435	$415
Cost Limit	$8,950	$8,500

State Family Leave Law Updates: Massachusetts and District of Columbia

The administrative agency governing the Massachusetts paid family leave program has announced extensions of certain provisions, and the District of Columbia's enforcement agency released guidance in implementing its paid family leave law.

Certain Massachusetts PFML Provisions Extended

As follow-up to last month's article discussing the Massachusetts Paid Family and Medical Leave law, the Department of Family and Medical Leave **announced extensions of certain deadlines**. Of particular note:

- ***Extension of providing the employee notification.*** Under the law, employers are required to notify their workforce about the paid family and medical leave program. The notice was to be provided by May 31, 2019. Employers now have until June 30, 2019 to provide information to their employees about the benefit.

- ***Extension for requesting private plan exemption.*** An employer who already provides comparable paid leave benefits to its employees has the option to apply for an exemption from the payroll tax obligation. Such exemption must be approved in the quarter prior to the quarter in which it becomes effective. The deadline for filing the exemption that would take effect for 1st quarter contributions has been extended from June 30, 2019 to September 20, 2019. The full contribution amount from July 1, 2019 would apply if the exemption is denied.

District of Columbia's Paid Family Leave Law

Two years ago, the District of Columbia enacted a paid family leave law, the provisions of which become effective shortly. This law requires all private sector employers to provide paid leave to its employees. To fund the benefit, the District will commence collecting a 0.62% payroll tax from employers beginning July 1, 2019. Paid leave benefits begin July 1, 2020.

For purposes of this law:

- A ***covered employer*** is defined as any private sector entity, regardless of size, who employs or exercises control over the wages, hours, or working conditions of an employee, and is required to pay unemployment insurance on behalf of its employees. A covered employer also includes a self-employed individual who has opted into the paid-leave program. The law does not apply to the federal government, the District itself, or an employer exempt from certain taxation by the District.
- A ***covered employee*** is defined as any worker of a covered employer who:
  - Spends more than 50% of his/her work time in the District; or
  - Spends a substantial amount of work time within the District for the covered employer, but less than 50% for that covered employer in another jurisdiction.

Types and Amount of Leave. Beginning July 1, 2020, a covered employee is entitled to take a cumulative amount of 16 weeks in any 12-month period depending on the needs, as follows:

- Up to 8 weeks of parental leave for baby bonding;
- Up to 2 weeks of medical leave for one's own serious health condition; and
- Up to 6 weeks of family leave for a family member's serious health condition. For this purpose, a *family member* includes a child (including a biological, adopted, or foster son or daughter; a stepchild; or a legal ward or person to whom the employee stands in loco parentis), a parent (including in-laws, foster parents, guardians, and persons in loco parentis), a spouse or domestic partner, a grandparent, or a sibling.

Contributions. Beginning July 1, 2019, all covered employers will be required to contribute an amount equal to 0.62% of the total wages of each of its covered employees to the Universal Paid Leave Implementation Fund. The paid family leave (PFL) tax is 100% employer-funded, and cannot be deducted from a worker's paycheck.

Recording wages and reporting requirements. Employers must begin recording wages for workers on April 1, 2019. Employers are required to submit quarterly wage reports in a similar fashion to the UC30 wage report that is submitted for unemployment insurance taxes. The first collection of the PFL quarterly tax covers wages paid to workers from April 1 through June 30, 2019.

Submission of these wage reports is accomplished through the Employer Self-Service portal.

Coordination with existing PTO plan. The PFL law does not provide any exemptions for employers with their own paid leave benefits. All employers are required to contribute to the PFL program.

Notice Obligations

- **Employee notice obligation.** An employee must provide written notice to the employer at least 10 days, or as early as possible, in advance of the paid leave. If the leave is unforeseeable, notice must be provided at the beginning of the work shift for which leave is being used, or within 48 hours in the event of an emergency.

- **Employer Notice Obligations**
  - *Workplace posting.* A covered employer is required to post a PFL program notice in a conspicuous place or places where employee notices are customarily posted, in each worksite location. The District's Office of Paid Family Leave (OPFL) provides a model workplace posting (in English and Spanish) on its **website** that can be used for this purpose.

  - *On-going notice obligations.* In addition to the workplace posting, a covered employer must also provide notice of the PFL benefit to employees at the following times:
    1. Within 30 days of hire;
    2. Annually to all employees; and
    3. At the time employee notifies the covered employer of the need for leave.

Employee protections. An employee returning from leave is entitled to the same rights as those under the federal Family and Medical Leave Act, or the District's Federal and Medical Leave law. An employee working for a small employer (less than 20 employees) would not be entitled to job protection if he/she decides to take paid leave. During leave, health insurance must be continued under the same conditions as prior to leave.

Record retention. Employers are required to maintain relevant payroll records for each covered employee for at least three years. Payroll records must include names, social security numbers or individual taxpayer identification numbers, pay period dates, wages for each pay period, and dates of employment.

Enforcement and Internet Resources. The District's Department of Employment Services administers and enforces the provisions of the paid family leave program. Additional information for both employees and employers relating to the PFL law including model employee notices, FAQs, and similar resources, is available on the District's Office of Paid Family Leave (OPFL) **website**.

Local Government Paid Sick Leave Updates: City of Minneapolis, Westchester County, NY and City of Dallas

An appeals court decision clarifies the applicability of the paid sick leave ordinance for the City of Minneapolis. In New York, Westchester County released model notices and guidance applicable to its earned sick leave ordinance. And finally, the City Council in Dallas enacted a paid sick leave ordinance.

Appeals Court Reverses Applicability of City of Minneapolis' Paid Sick Leave Ordinance

The City of Minneapolis enacted a paid sick leave ordinance in 2016 that requires employers to provide sick leave to employees who work in the City of Minneapolis (see our ***Benefit Beat*** **article** for a summary of this ordinance). The ordinance took effect on July 1, 2017.

Following enactment of the law, a legal challenge was initiated by the Minnesota Chamber of Commerce as to the applicability of which employers had to provide the benefit. As written, the law applies to any person or entity who employs one or more employees. Employees entitled to leave are those working a minimum of 80 hours per calendar year within the geographic boundaries of the City. The question then became, does the ordinance apply to all employers located within and outside of the City, or to just those located within the City boundaries.

In settling the matter, the District Court ruled that the ordinance only applies to employers who are physically located in the City's geographical boundaries, and not to employers located extraterritorially. The Minnesota Court of Appeals reversed the District Court's ruling and affirmed that the ordinance applies extraterritorially [*Minn. Chamber of Commerce v. City of Minneapolis*, No. A18-0771 (Minn. Ct. App. Apr. 29, 2019)]. Thus, the ordinance applies to all private sector employers, without regard to where the employer is located.

Updates: Westchester County's Earned Sick Leave Law

The County of Westchester, New York enacted an earned sick leave law in October, 2018 (for a summary of this ordinance, see *Westchester County - Earned Sick Leave Law, Benefit Beat*, 12/3/18). The ordinance requires employers in Westchester County to provide up to 40 hours of earned sick leave to their employees. While the ordinance took effect on April 10, 2019, employees do not begin to accrue sick leave until July 10, 2019 (or, 90 days following the effective date of the law).

To assist both employers and employees in implementing the law, the Westchester County Human Rights Commission released a **model workplace poster** and **notice of employee rights**, as well as a set of FAQs for **employers** and **employees** on its **dedicated webpage**.

Applicability, rate of accrual, maximum sick leave amounts, and payment of leave benefit

The employer FAQs make clarifications as to applicability of the law. Generally, any person, corporation, industry, trade, business or service, including Westchester County government are subject to the law.

The employer's obligation to provide sick leave, the rate of accrual, the amount of leave, as well as determination of whether the leave is paid or not, is contingent upon employer size, as follows:

Number of Employees	*Rate of Accrual of Sick Leave*	*Sick Leave Max. Sick Leave per Calendar Year*	*Paid or Unpaid*
5 or more	One hour per 30 hours worked	Up to 40 hours	Paid
1 to 4	One hour per 30 hours worked	Up to 40 hours	Unpaid
1 or more domestic workers *Note: earned sick leave under this law is in addition to the "days of rest" covered under New York Labor Law*	One hour per 7 days worked	Up to 40 hours	Paid

Notification to Employees. Employers are obligated to provide two types of notifications to employees:

- Employers must provide the **Notice of Employee Rights** to current employees by July 10, 2019. In addition, employers have an on-going obligation to provide this notice to all new hires upon commencement of employment.
- Employers are required to display a workplace poster, in the appropriate language of its workforce (English version available **here**), in a conspicuous location accessible to employees.

New Paid Sick Leave Ordinance in Dallas

The City of Dallas joins Austin and San Antonio in requiring employers to provide paid sick leave benefits (for a summary of the Austin and San Antonio ordinances, see our December and September, 2018 articles).

On April 24, 2019, the Dallas City Council enacted a paid sick leave ordinance that will require employers to provide an earned sick leave benefit for their employees. Briefly, employees working a minimum of 80 hours a year are entitled to earn one hour of paid sick leave for every 30 hours worked. Accrued leave can be used for medical needs of the employee or his/her family member, or to obtain services or care as a result of domestic violence, sexual assault, or stalking.

The Dallas Ordinance becomes effective on August 1, 2019. For employers with fewer than five employees, the applicability date is delayed until August 1, 2021.

However, whether the Dallas ordinance actually takes effect is contingent upon several pending matters. An appeals court in Texas has already placed the City of Austin's paid sick leave ordinance on hold (see *Paid Sick Leave Changes in Texas, Benefit Beat*, 9/6/18). While the San Antonio paid sick leave ordinance is set to take effect on August 1, 2019 (see *Paid Sick Leave Updates, Benefit Beat*, 12/8/18), its implementation, as well as the Dallas and Austin ordinances may be blocked by legislative action.

Currently, there are two Senate bills (SB 2485 and SB 2487) and one House Bill (H. B. 222) being considered that would prohibit municipalities within the state from enacting paid sick leave laws or ordinances. If any of these bills are enacted, they would take effect on September 1, 2019.

Both Senate bills were heard in the Texas House on May 1, 2019. At the time of this writing, the matter is left pending in committee. The deadline for actions under both House and Senate rules of the Texas Legislature is May 27, 2019, which would be the last day of the legislative session.

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