



FACT SHEET

HOW TO VOLUNTARILY REPORT NON-BINARY EMPLOYEES

NOTICE

Employers (i.e., filers) should read the [2023 EEO-1 Component 1 Instruction Booklet](#) (i.e., “*Instruction Booklet*”) prior to and in conjunction with using the below “fact sheet.” Filers must ensure they are complying with the EEOC’s substantive filing requirements detailed in the *Instruction Booklet* and should not refer solely to this “fact sheet” to complete their required 2023 EEO-1 Component 1 filing. The *2023 EEO-1 Component 1 Instruction Booklet* may be accessed at the following link on the EEOC’s dedicated EEO-1 Component 1 website (www.eeocdata.org/eeo1):
[https://www.eeocdata.org/pdfs/2023 EEO 1 Component 1 Instruction Booklet.pdf](https://www.eeocdata.org/pdfs/2023_EEO_1_Component_1_Instruction_Booklet.pdf).

The EEO-1 Component 1 data collection currently provides only binary options (i.e., male or female) for reporting employee counts by sex, job category, and race or ethnicity. However, **employers may voluntarily choose to report employee demographic data for non-binary employees** – that is, employees who do not identify as exclusively male or female – by sex (i.e., non-binary), job category and race or ethnicity in the “comments” section of the report(s). Employers that voluntarily choose to report non-binary employees in the “comments” section of the report(s) should not assign such employees to the male or female categories or any other categories (i.e., job category and race or ethnicity) within the report(s).

Single-Establishment Employers

Single-establishment employers that voluntarily choose to report demographic data for non-binary employees may do so in the “Certification Comments” section within the *EEO-1 Component 1 Online Filing System (OFS)*.

For example, a single-establishment employer that has a total of 500 employees and is voluntarily reporting 2 of those employees as non-binary in the “Certification Comments” section should show an employee count of 498 employees on the employer’s “Single-Establishment Employer Report” (i.e., less the 2 non-binary employees reported in the comments section). Also, please note that the voluntary reporting of non-binary employees does *not* impact the employee threshold for EEO-1 Component 1 reporting purposes. For example, if a non-federal contractor employer has a total of 100 employees, of which 2 are voluntarily reported as non-binary in the comments, the employer is still required to file even though the total number of employees on the employer’s “Single-Establishment Employer Report” would reflect only 98 employees.



For employers that voluntarily choose to provide demographic data for their non-binary employees, please follow the instructions in the section of the [2023 EEO-1 Component 1 Instruction Booklet](#) entitled “**REPORTING BY RACE OR ETHNICITY**” when deciding whether to report an employee as male, female, or non-binary.¹ If the sex reported by an employee during voluntary self-identification differs from the sex recorded in the employee’s employment records, the employer should report the former (i.e., self-identification) and not the latter (i.e., employment records).

Employers choosing to voluntarily report employee demographic data for non-binary employees should preface any such data in the comments with the phrase “Additional Non-Binary Employee Data:”. For example:

“Additional Non-Binary Employee Data: 1 non-binary employee in Job Category Administrative Support Workers; Race/Ethnicity: White (Not Hispanic or Latino). 3 non-binary 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).”

Multi-Establishment Employers

Multi-establishment employers that *voluntarily* choose to report demographic data for non-binary employees may do so in the “Headquarters or Establishment-Level Comments” section.

For example, if a multi-establishment employer has a total of 1,000 employees and is voluntarily reporting 10 of those employees as non-binary for the entire enterprise, the multi-establishment employer would do so in the comments section of the EEO-1 Component 1 report where those 10 non-binary employees are employed (i.e., on the appropriate “Headquarters Report” or “Establishment-Level Report”). Using this same example, if there are 200 employees at the multi-establishment employer’s headquarters and 5 of those employees are voluntarily reported as non-binary in the comments section, the “Headquarters Report” would only show a total of 195 employees (i.e., less the 5 non-binary employees reported in the comments section). Continuing this example, the remaining 5 non-binary employees would be reported in the comments section of the appropriate “Establishment-Level Report.” Finally, the employer’s “Consolidated Report” would show an employee count of 990 employees (i.e., less the 10 non-binary employees reported in the comments sections on the “Headquarters Report” and “Establishment-Level Report”). Also, please note that the voluntary reporting of non-binary employees does *not* impact the employee threshold for EEO-1 Component 1 reporting purposes. For example, if a non-federal contractor employer has a total of 100 employees, of which 2 are voluntarily reported as non-binary in the comments, the employer is still required to file even though the total number of employees on the employer’s “Consolidated Report” would reflect only 98 employees.

¹ The *2023 EEO-1 Component 1 Instruction Booklet* may be accessed at the following link on the EEOC’s dedicated EEO-1 Component 1 website (i.e., www.eeocdata.org/eeo1): [www.eeocdata.org/pdfs/2023 EEO 1 Component 1 Instruction Booklet.pdf](http://www.eeocdata.org/pdfs/2023_EEO_1_Component_1_Instruction_Booklet.pdf).



This option will be available to multi-establishment filers through manual entry in the *OFS* as well as through the data file upload function.

The “Headquarters or Establishment-Level Comments” section allows a multi-establishment employer to provide comments for its headquarters as well as each of its individual non-headquarters establishments at the establishment-level. Providing comments, including demographic data for non-binary employees, **is optional and not required.**

For employers that voluntarily choose to provide demographic data for their non-binary employees, please follow the instructions in the section of the [2023 EEO-1 Component 1 Instruction Booklet](#) entitled “**REPORTING BY RACE OR ETHNICITY**” when deciding whether to report an employee as male, female, or non-binary.² If the sex reported by an employee during voluntary self-identification differs from the sex recorded in the employee’s employment records, the employer should report the former (i.e., self-identification) and not the latter (i.e., employment records).

Employers choosing to voluntarily report employee demographic data for non-binary employees should preface any such data in the comments with the phrase “Additional Non-Binary Employee Data:”. For example:

“Additional Non-Binary Employee Data: 1 non-binary employee in Job Category Administrative Support Workers; Race/Ethnicity: White (Not Hispanic or Latino). 3 non-binary 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).”

Please note that filers voluntarily choosing to provide such data at the headquarters or establishment-level through the data file upload option *must* ensure that any comments submitted do not contain any commas. See “**Field 189**” in the **2023 EEO-1 Component 1 Data File Upload Specifications** available on the EEOC’s dedicated EEO-1 Component 1 website at www.eeocdata.org/eeo1.

EEOC 2023 EEO-1 Component 1 Data Collection

All updates about the 2023 EEO-1 Component 1 data collection, including the *2023 EEO-1 Component 1 Instruction Booklet* and the *2023 EEO-1 Component 1 Data File Upload Specifications*, are available on the EEOC’s dedicated EEO-1 Component 1 website at www.eeocdata.org/eeo1.

² The *2023 EEO-1 Component 1 Instruction Booklet* may be accessed at the following link on the EEOC’s dedicated EEO-1 Component 1 website (i.e., www.eeocdata.org/eeo1): www.eeocdata.org/pdfs/2023_EEO_1_Component_1_Instruction_Booklet.pdf.



To further assist filers, the EEOC provides supplementary resource materials (e.g., user’s guide; frequently asked questions (FAQs); fact sheets; mini help desk guides) at the opening of each data collection. Access by registered *EEO-1 Component 1 Online Filing System (OFS)* account holders to these supplementary resource materials is available through the EEOC’s dedicated EEO-1 Component 1 data collection website at www.eeocdata.org/eeo1.

The deadline to file the 2023 EEO-1 Component 1 report is **11:00 pm ET (i.e., Eastern Time) on Tuesday, June 4, 2024** (i.e., “Published Due Date”). Following the **Tuesday, June 4, 2024** “Published Due Date” deadline, the EEOC will enter the “Failure to File” phase. All employers who have *not submitted and certified* their mandatory 2023 EEO-1 Component 1 report(s) by the **Tuesday, June 4, 2024** “Published Due Date” deadline will receive a “Notice of Failure to File” from the EEOC instructing them to submit and certify their data *as soon as possible, and no later than 11:00 pm ET (i.e., Eastern Time) on Tuesday, July 9, 2024* (i.e., “Failure to File” deadline). After the **Tuesday, July 9, 2024** “Failure to File” deadline passes, *no* additional 2023 EEO-1 Component 1 report(s) will be accepted, and eligible employers will be *out of compliance* with their mandatory 2023 EEO-1 Component 1 filing obligations.

The EEO-1 Component 1 report is a mandatory annual data collection that requires all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, to submit workforce demographic data, including data by job category and sex and race or ethnicity, to the EEOC. The authorities under which EEO-1 Component 1 data are collected include: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*, and Sections 1602.7-1602.14, Chapter XIV, Title 29 of the Code of Federal Regulations (CFR); Exec. Order No. 11246, 30 FR 12319 (Sept. 24, 1965) and 40 CFR 60-1.7(a).