

TYPES NOT MAPPED YET July 08, 2021 | TTR not mapped yet | Barry L. Fischer, Susan M. Lorenc, Zoe S. Spector

New requirement for corporations doing business in Illinois to publicly report employee demographic data

Certain corporations doing business in Illinois will be required to report demographic data on their annual reports filed after January 1, 2023, including gender, race and ethnicity information of the corporation's employees, broken down by job category. This demographic data will be made publicly available by the state of Illinois on the internet.

Under a recently approved amendment to the Illinois Business Corporations Act, the annual report for an Illinois corporation or a corporation doing business in Illinois that is also required to file EEO-1 information reports with the U.S. Equal Employment Opportunity Commission (EEOC) will need to include, in that Illinois annual report, information contained in part D of the EEO-1 filing that the company files with the EEOC.

Currently, the following corporations are required to file EEO-1 reports with the EEOC:

- generally, any employer with 100 or more employees,
- certain companies with at least 15 employees that are owned by or affiliated with another company where companies in the aggregate have 100 or more employees, and
- most prime or first-tier federal contractors that have 50 or more employees.

Part D of the EEO-1 report currently requires disclosure of demographic data such as the gender, race, and ethnicity of the employee force, broken down by nine job categories (first/mid-level officials and managers, professionals, technicians, sales workers, administrative support workers, craft workers, operatives, laborers and helpers, and service workers). The EEO-1 report is largely confidential.

For the stated purpose of making the diversity efforts of corporations more transparent, the State of Illinois will require corporations subject to EEO-1 filing requirements to submit substantially similar demographic data to what is included in Part D to the EEO-1 in their Illinois annual corporation report. This demographic information will need to be included for any report filed on or after January 1, 2023. The Secretary of State will then be required to publish and make publicly available such information on their official website within 90 days of their receipt of the annual report (or as soon thereafter as practicable).

Using this published data, any party will be able to determine and compare the gender and racial makeup of employees (by varying job categories) of any corporation registered in or qualified to do business in Illinois (whether or not such employees are actually working in Illinois).

Currently, California is the only state that require employers to annually report EEOC demographic and pay data to a state. They require submission to the California Department of Fair Employment and Housing to allow the department to investigate and prosecute discrimination claims, but that submission is confidential. Illinois is unique in that it will require the data to be publicly disseminated.

Although the reporting requirements will not come into effect until January 2023, corporations doing business in Illinois should consult with legal and other advisors regarding potential publicity and litigation implications and consider any changes (including to the company's approach to EEOC reporting generally) appropriate for 2022 (as that will be the time period initially reported in the 2023 Illinois Report). One approach may be to consider applicable exceptions to the reporting requirements. Thompson Coburn's Corporate and Employment attorneys are available to assist you with the process, or provide you more information regarding these issues.



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