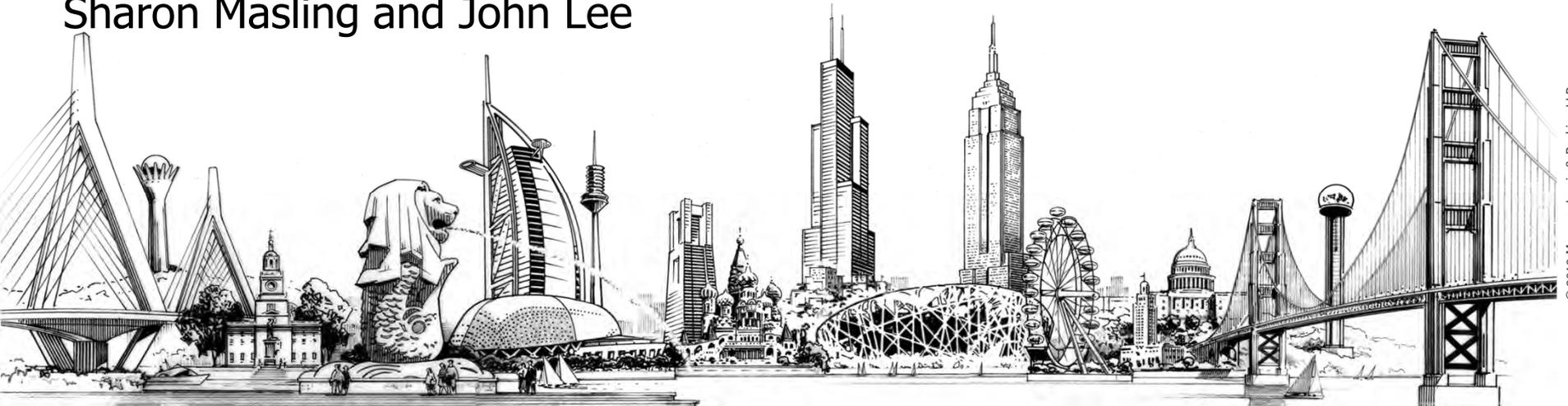


Morgan Lewis

PREPARING FOR THE EEO-1 PAY DATA COLLECTION DEADLINE

August 20, 2019

Sharon Masling and John Lee



Outline for Today's Presentation

Pay Data Collection Overview

Requirements

How to File

Resources Available

Privileged Pay Equity Analyses

Questions

What Is the EEO-1 Component 2 Pay Data Collection?

- For more than **50 years**, the EEOC has collected employer demographic data through its Employer Information Report, more commonly known as the EEO-1.
- In September 2016, the EEOC announced a revision of the EEO-1. The revised EEO-1 form now requires employers to report **W-2 wage information within 12 pay bands** and **total hours worked** for all employees by **sex, race/ethnicity, and job category**.
- According to the EEOC, the purpose of the pay data collection was three-fold:
 - Improve investigations of possible pay data discrimination
 - Enable the EEOC to compile, analyze, and publish aggregated data by industry and region
 - Assist employers in evaluating their own pay practices, thus incentivizing voluntary remediation and prevention

How Did We Get Here?

February 2016

The EEOC publishes a notice in the *Federal Register* announcing its intention to revise the EEO-1 data collection to begin collecting pay data.

September 2016

The Office of Management and Budget (OMB) approves the revision Report for 2017 data is due in March 2018.

August 2017

The OMB reverses course and tells the EEOC it has decided to initiate a review and stay of the pay data collection due to privacy, confidentiality, utility, and burden concerns.

How Did We Get Here?

September 2017

Litigation is initiated seeking reinstatement of the pay data collection requirement.

March 2019

US District Court Judge Tanya Chutkan vacates the stay and reinstates the pay data collection requirement.

September 30, 2019

Covered employers must submit Component 2 pay data for 2017 and 2018.

Who Must File

- **Private employers** (including federal contractors) with **100 or more employees**
 - Must include total employee number at headquarters and at all locations or establishments.
 - Federal contractors with fewer than 100 employees do NOT have to file

Which Report(s) to File

- **Single-establishment** employers

- Employers doing business at only one establishment in one location must complete a single Component 2 EEO-1 online data record.

- **Multi-establishment** employers

- Employers doing business at more than one establishment must complete online:
 1. a report covering the principal or headquarters office;
 2. a separate report for **each** establishment employing 50 or more persons;
 3. a separate report (**Type 8 record**) for **each** establishment employing fewer than 50 employees, OR an Establishment List (**Type 6 record**) showing the name, address, and total employment for **each** establishment employing fewer than 50 persons.
 4. A consolidated report (i.e., the total number of employees indicated on the headquarters report + the establishment reports + the list of establishments employing fewer than 50 employees).

***Note** – Multi-establishment employers include parent corporations and their subsidiary holdings. Parent corporation “refers to any corporation which owns all or the majority stock of another corporation so that the latter relates to it as a subsidiary.”

What Must Be Filed

Number of Employees Report

- Job Categories (10 Categories)
- Salary Compensation (12 Bands)
- Race/Ethnicity
- Gender

Hours Worked Report

- Job Categories (10 Categories)
- Salary Compensation (12 bands)
- Race/Ethnicity
- Gender

Information Breakdown

Job Categories

The 10 EEO-1 job categories are:

1. Executive/Senior-Level Officials and Managers
2. First-/Mid-Level Officials and Managers
3. Professionals
4. Technicians
5. Sales Workers
6. Administrative Support Workers
7. Craft Workers
8. Operatives
9. Laborers and Helpers
10. Service Workers

Salary Compensation

Band	Compensation Band Label
1	\$19,239 and under
2	\$19,240 - \$24,439
3	\$24,440 - \$30,679
4	\$30,680 - \$38,999
5	\$39,000 - \$49,919
6	\$49,920 - \$62,919
7	\$62,920 - \$80,079
8	\$80,080 - \$101,919
9	\$101,920 - \$128,959
10	\$128,960 - \$163,799
11	\$163,800 - \$207,999
12	\$208,000 and over

Gender

- Male
- Female

Race/Ethnicity

- Hispanic or Latino
- Non/Hispanic or Latino
 - White
 - Black or African American
 - Native Hawaiian or Pacific Islander
 - Asian
 - Native American or Alaska Native
 - Two or more races

Note: Self-identification is the preferred method of identification

(1) Report by "Number of Employees"

Job Categories	Salary Compensation Band	Number of Employees (Report employees in only one category)														Total Col. A-N
		Race/Ethnicity														
		Hispanic or Latino		Non-Hispanic or Latino							Female					
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		
1 Executive/ Senior Level Officials and Managers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															
10 Service Workers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															
Total Number of Employees																

Sample Form

Reminder: The September 30, 2019 deadline is for both **2017** and **2018** work snapshots.

(2) Report by "TOTAL Number of Hours Worked in Last Year"

Job Categories	Salary Compensation Band	For each cell provide the TOTAL Number of Hours worked in last year														Total Col. A-N
		Race/Ethnicity														
		Hispanic or Latino		Non-Hispanic or Latino												
				Male					Female							
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		
1 Executive/ Senior Level Officials and Managers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															
10 Service Workers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															
Total Number of Hours Worked																

Reminder: The September 30, 2019 deadline is for both **2017** and **2018** work snapshots.

When to Count Employees

“Workforce Snapshot Period”

- Employers should count employees during the selected “workforce snapshot period.”
- The “workforce snapshot period” is an **employer-selected pay period** between **October 1 and December 31** of the reporting year, e.g., the snapshot period for the 2017 EEO-1 report would be a pay period selected by employers between October 1, 2017 and December 31, 2017.

Which Employees to Count

“Workforce Snapshot Period”

- The only employees whose compensation and hours-worked data must be reported are those **full- and part-time employees** who were **on the employer’s payroll during the workforce snapshot period**. The report should include the total number of full-time and part-time employees during the selected snapshot.
- Employers are **permitted to choose a different workforce snapshot period** for reporting Component 2 data for each of the two years, if they so choose. The workforce snapshot period can also be different from that used for Component 1 data.

Determining Appropriate Compensation Bands

Compensation Data

- Review the **W-2 Box 1** earnings for the year for all employees identified in the workforce snapshot.
- Based on compensation information in the W-2 Box 1 - Wages, tips, other compensation, assign employees to the appropriate compensation pay band.
- Do NOT annualize earnings for employees who did not work the full calendar year.

Counting Hours Worked

Hours Worked

- Include hours worked for all employees who are employed in the workforce snapshot period by assigning them to the appropriate pay band and job category.
- Hours worked should be reported as an **aggregate value** for each job category and pay band and should represent the total hours worked that year by all employees in the reported job category and pay band.

Calculating Hours Worked – Exempt and Non-Exempt Employees

Hours Worked

- For **non-exempt employees** under the Fair Labor Standards Act (FLSA), employers must report **actual hours** worked.
- For **FLSA-exempt employees**, employers have the option to either:
 - (1) Report **actual hours** worked by the exempt employees if the record already exists; or
 - (2) Report a **proxy** of 40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees, **multiplied by the number of weeks** the employees were employed during the EEO-1 reporting year. No need to account for paid time off if using the proxy method.

(1) Report by "Number of Employees"

Job Categories	Salary Compensation Band	Number of Employees (Report employees in only one category)														Total Col. A-N
		Race/Ethnicity														
		Hispanic or Latino		Non-Hispanic or Latino						Female						
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		
1 Executive/ Senior Level Officials and Managers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999	2														
	12. \$208,000 and over									1						
10 Service Workers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															
Total Number of Employees																

Sample Form

Executive Level

Latino male W-2 : \$170K
 Latino male W-2 : \$190K
 African American female W-2 : \$209K

(2) Report by "TOTAL Number of Hours Worked in Last Year"

Job Categories	Salary Compensation Band	For each cell provide the TOTAL Number of Hours worked in last year														Total Col. A-N
		Race/Ethnicity														
		Hispanic or Latino		Non-Hispanic or Latino						Female						
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or more races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		
1 Executive/ Senior Level Officials and Managers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999	3640														
	12. \$208,000 and over										2080					
10 Service Workers	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															
Total Number of Hours Worked																

Executive Level

\$170K Latino male: started April 2, 2018
 – 39 weeks x 40 = 1,560 hours
 \$190K Latino male: 52 weeks x 40 =
 2,080 hours
 Total # of hours:
 1,560 + 2,080 = 3,640 hours

\$209K African American female:
 52 weeks x 40 = 2,080 hours

Service Worker

\$35K African American female – actual
 hours worked = 1,863 hours

Acquisitions/Mergers/Spin-Offs

Acquisitions Mergers Spin-Offs

- In general, if an **acquisition or merger** occurred in 2017 or 2018, the acquiring or merged company is responsible for submitting Component 2 data.
- If, however, a company experienced an acquisition or merger and **does not have access to the Component 2 data** from the acquired or former company, the employer should note this in the **comments box** on the certification page in the Component 2 EEO-1 Online Filing System.
- A **spinoff company** is **not responsible** for filing the form for its employees **if it was still affiliated with the former parent company** during the snapshot period.

Confidentiality

Confidentiality

- EEOC staff is **statutorily prohibited** from sharing employer information, including EEO-1 data.
- FOIA exemptions 3 and 4 also apply → EEOC is not required to disclose under FOIA.
- NORC has implemented multiple layers of security and protection.

Instructions on How to File

1. Receive a **User ID** from NORC via
 - a) letter mailed through USPS, and/or
 - b) email to the registered EEO-1 email address on record.
2. Visit the [*Component 2 EEO-1 Online Filing System*](#) to log in using the User ID provided in the letter and/or email.
3. File and **certify reports** through the Online Filing System.
 - There are two ways to file:
 1. Complete the online form
 2. Upload the CSV Data File (this option became available on August 15)

Upload File Example

Establishment-Level Information														Compensation Data for Each Employee Group				
														Where Employee Group is defined by: Job Category x Demographic Group x Pay Band				
USERID												QUESTION B2C (DID EST. FILE BEFORE?)	QUESTION D2 (IS EST. FEDERAL?)	JOB CATEGORY	RACE ETHNICITY GENDER (CODED CATEGORY)	ANNUAL SALARY (CODED TO PAY BAND)	TOTAL EMPLOYEES	TOTAL HOURS
(SENT BY NORC)	STATUS CODE	UNIT NUMBER	UNITNAME	UNITADDRESS	UNIT ADDRESS2	CITY	STATE	ZIP CODE	COUNTY NAME	FEIN	NAICS CODE							
12345678	4	1252	FINE AUTOS ON MAIN	123 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	1	F	11	1	2000
12345678	4	1252	FINE AUTOS ON MAIN	123 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	A	9	12	24000
12345678	4	1252	FINE AUTOS ON MAIN	124 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	A	8	20	40000
12345678	4	1252	FINE AUTOS ON MAIN	125 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	B	9	5	10000
12345678	4	1252	FINE AUTOS ON MAIN	126 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	C	9	14	28000
12345678	4	1252	FINE AUTOS ON MAIN	127 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	D	9	10	20000
12345678	4	1252	FINE AUTOS ON MAIN	128 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	I	9	15	30000
12345678	4	1252	FINE AUTOS ON MAIN	129 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	L	9	10	20000
12345678	4	1252	FINE AUTOS ON MAIN	130 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	5	L	8	3	6000
12345678	4	1252	FINE AUTOS ON MAIN	131 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	6	D	6	4	8000
12345678	4	1252	FINE AUTOS ON MAIN	132 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	6	I	6	3	6000
12345678	4	1252	FINE AUTOS ON MAIN	133 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	6	M	6	6	12000
12345678	4	1252	FINE AUTOS ON MAIN	134 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	A	5	2	4000
12345678	4	1252	FINE AUTOS ON MAIN	135 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	B	5	3	6000
12345678	4	1252	FINE AUTOS ON MAIN	136 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	D	5	2	4000
12345678	4	1252	FINE AUTOS ON MAIN	137 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	F	5	2	4000
12345678	4	1252	FINE AUTOS ON MAIN	138 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	G	5	3	6000
12345678	4	1252	FINE AUTOS ON MAIN	139 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	I	5	4	8000
12345678	4	1252	FINE AUTOS ON MAIN	140 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	J	5	3	6000
12345678	4	1252	FINE AUTOS ON MAIN	141 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	L	5	2	4000
12345678	4	1252	FINE AUTOS ON MAIN	142 MAIN ST.		ANYTOWN	IL	60600	WILL	987654321	441110	1	2	10	N	5	1	2000

Contact Information

- If you have any specific questions about this collection, you may contact NORC toll-free at (877) 324-6214 or send an email to EEOCcompdata@norc.org.
- Alternatively, Morgan Lewis can contact NORC on a client's behalf, without disclosing the name of the client.

Available Resources

- The EEOC has contracted with NORC at the University of Chicago to conduct the Component 2 EEO-1 Compensation Data Collection for 2017 and 2018.
- The following materials and information are available to help support Component 2 EEO-1 Compensation Data filing and are provided by [NORC](#).
 - ✓ [Frequently Asked Questions](#) – FAQs re: filing deadline and requirements, summary compensation data, hours worked, multi-establishment reporting, and more.
 - ✓ [Sample Form](#) – the proposed EEO-1 Form to collect pay data in the *Component 2 EEO-1 Online Filing System*.
 - ✓ [Instruction Booklet for Filers](#) – instructions for submitting the Component 2 EEO-1 Report.
 - ✓ [User's Guide](#) – instructions for using the Component 2 EEO-1 Online Filing System.
 - ✓ [Fact Sheet for Component 2 EEO-1 Report Filers](#) – a list of important deadlines, reminders, and definitions to support a successful submission of Component 2 data for 2017 and 2018 calendar years.
 - ✓ [Upload File Specifications](#) – instruction for developing Component 2 EEO-1 upload files so employers may prepare in advance of the upload system availability.
 - ✓ [Upload File Validation Process](#) – explanation of the validation process, validation rules, and possible error messages filers may encounter during the filing process.
 - ✓ [Component 2 EEO-1 Compensation Data Collection Initial Notification](#) – the USPS letter sent on July 1, 2019 to notify companies of the immediate reinstatement of the revised Component 2 EEO-1 collection for 2017 and 2018.
 - ✓ [Reference Documents](#) – supporting reference materials, including the job classification guide, 2017 NAICS codes, and a Postal Code Lookup file.

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Increased Attention on Pay Equity

- House passed the Paycheck Fairness Act
- Numerous states have enacted equal pay and salary history laws
- Strategic enforcement priority for EEOC since 2013
- Calls for pay transparency from boards and employers

Internal Pay Equity Analysis

- Component 2 Pay Data Collection may not provide an accurate analysis of potential pay disparities
 - Job bands are extremely broad
 - W-2 Box 1 data is not reflective of actual business decisions
 - Fails to account for other legitimate, non-discriminatory factors that impact compensation
- Employers may wish to conduct a pay equity analysis
 - More accurate analysis of pay disparities and underlying causes
 - Especially important if the Component 2 pay data collection suggests any significant discrepancies
 - Provides opportunity to remediate prior to 2019 pay data collection

Morgan Lewis Privileged Pay Equity Analyses

- Conducted under privilege
 - Analyze compliance with pay equity laws
 - Assess potential areas of legal risk
- Develop strategy to remediate any unexplained pay gaps

What's Next

- September 30 filing deadline
- Appeal pending in the DC Circuit
- Unknown whether the EEOC will collect 2019 data

QUESTIONS



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THANK YOU

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