



Charting the course for business success

STRATEGIC WORKPLACE SOLUTIONS, LLC

# The Lighthouse Report

SEPTEMBER / OCTOBER 2008

## EEO-1 Report—Due September 30th

### FIND THESE LINKS ON OUR WEBSITE:

US Dept. of Labor

EEOC

NC Dept. of Labor

IRS

WNC HRA

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The EEOC and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have used the Employer Information Report EEO-1 (EEO-1) since 1966 to collect annual data from covered private employers (100 or more employees) and certain federal contractors about their minority and female workforce. This includes both part-time and full-time workers but excludes casual and temporary workers. You can use any pay period between July and September as the basis for this report. If you have not resurveyed your employees since the racial/ethnic categories were changed, the EEOC suggests that you do so. When employees don't voluntarily self-identify, you should rely on visual ID—self-identification should not be required.

The EEO-1 is required to be filed with the U.S. Equal Employment Opportunity Commission's EEO-1 Joint Reporting Committee. The filing deadline for the 2008 EEO-1 is September 30, 2008. The preferred method for completing the 2008 EEO-1 is the web-based filing system. Online filing requires you to log into the database with a Login ID and Password. The benefits of online reporting include the following:

**No Installation:** The online form is totally web based. There is no software to download or install.

**Data Reuse:** As much as possible, information is pre-filled from the previous year to speed up data entry.

**Secure:** Data is transferred over the internet using encryption, assuring your privacy.

**Historical Access:** Access up to 10 years worth of EEO-1 data for your establishments.

⇒ If you are ready to file, go to this webpage: <http://www.eeoc.gov/eeo1survey/index.html>.

⇒ If you have previously registered/filed, but cannot locate your Login ID and/or Password, send an email to the EEO-1 Joint Reporting Committee at: [e1.techassistance@eeoc.gov](mailto:e1.techassistance@eeoc.gov).

⇒ If you have never filed an EEO-1 (print or electronic), go to the following web address to complete the online registration: <https://apps.eeoc.gov/eeo1/register.jsp>.

⇒ To request a filing extension, submit an e-mail to the following address before September 30: [e1.extensions@eeoc.gov](mailto:e1.extensions@eeoc.gov). In the email, include your company name, company number, address, and the contact information for the person responsible for the report.

We would be happy to help you complete this requirement ([info@strategic-workplace-solutions.com](mailto:info@strategic-workplace-solutions.com)) or you can go to the EEOC website for assistance: [www.eeoc.gov](http://www.eeoc.gov).

Sources: SHRM & EEOC

## ADA Guidance Available from the EEOC

The ADA covers employers that have at least 15 employees. It also applies to employment agencies and labor organizations.

On September 3rd, 2008, The U.S. Equal Employment Opportunity Commission (EEOC) issued a guide addressing how the Americans with Disabilities Act (ADA) applies to a wide variety of performance and conduct issues.

The new guide makes clear that employers can apply the same performance standards to all employees, including those with disabilities, and emphasizes that the ADA does not affect an employer's right to hold all employees to basic conduct standards. At the same time, however, employers must make reasonable accommodations that enable individuals with disabilities to meet performance and conduct standards.

The guide reviews relevant ADA requirements and explains how they govern performance and conduct standards as applied to employees with disabilities. Through examples based on actual cases

and specific scenarios that the EEOC has learned about from employers and individuals with disabilities, this guide explains when and how performance and conduct standards should be applied and the appropriate role of reasonable accommodation.

The guide explains how and when employees should request accommodations to help them meet performance requirements and comply with conduct rules, and how an employer should handle such requests.

Other topics addressed include issues related to attendance, dress codes, and drug and alcohol use, and the circumstances in which employers can ask questions about an employee's disability when performance or conduct problems occur.

We would be happy to email a pdf copy of this guide to you. Just email your request to: [info@strategic-workplace-solutions.com](mailto:info@strategic-workplace-solutions.com).

Source: SHRM & EEOC

## Ethics—A Business Imperative

Ethics are defined as values or moral principles that guide individual and group behavior. They are standards for determining what is right and what is wrong. In the workplace, ethics discussions typically address a code of conduct, legal compliance, and corporate social responsibility.

Ethical problems occur when standards are not defined, guidelines are not provided, leadership does not "walk the talk," there are no or insufficient consequences for violators, "whistleblowers" experience stigma and/or retaliation, and employees receive mixed messages regarding what is expected. But, how can you get your employees to 1) behave ethically, and 2) report ethical concerns to you first rather than a regulatory agency or the media?

You must institute a comprehensive approach in order to build an ethical organization. A strong, organization-wide cultural approach very significantly decreases misconduct, increases the likelihood of reporting ethics violations, and reduces retaliation against "whistleblowers." Key components of a comprehensive ethical program include the following: a comprehensive policy, specific guidelines, a reporting mechanism, an identified compliance officer or third party provider, defined investigation procedures, consequences for ethical violations, training for leaders (with lots of examples/focus on getting buy-in), employee training, and a mechanism for on-going communication regarding ethics including recognition/celebration of ethical accomplishments.

Common sections for a code of conduct include: conflict of interest, personal use of company property/information, how employees are treated, how customers/the public are treated, and assorted legal/regulatory compliance issues that may vary across industries. These sections include many topics. To access our ethics presentation handouts: [www.strategic-workplace-solutions.com/about/hr-resources](http://www.strategic-workplace-solutions.com/about/hr-resources).

# Exempt/Non-Exempt Classifications

Paying employees on a salary basis is very appealing. You can have them work as many hours as you want and pay them the same amount. You don't have to worry about overtime or time reporting.

*Don't worry, be happy, right? Wrong.* Misclassifying non-exempt employees as exempt can be very costly when you consider back pay (at time and a half), payroll taxes, penalties, and interest. And, not just for the one employee, but for all applicable employees. Yikes!

**Background:** The Fair Labor Standards Act (FLSA) requires that non-exempt employees in the United States be paid overtime pay at 1 1/2 times the employee's regular rate of pay for all hours worked over 40 in a workweek. (Note that some employers and employees are excluded from these overtime requirements.) Generally, the employee's regular rate of pay includes all remuneration for employment, unless specifically excluded. Because the wage rate may vary, overtime pay must be calculated on the basis of the average hourly rate derived from the agreed form of remuneration. If deductions are made from an employee's pay, the wage rate is generally calculated before the deduction is made.

**Exemption Summary:** It is not uncommon for employers to equate salaried with an exempt employee and hourly with a non-exempt employee. However, paying an employee on a salary basis does not, by itself, make him/her exempt from the FLSA overtime provisions. There are basically four exempt classifications, including executive, administrative, professional, and outside sales. There are three kinds of exempt professionals: learned professional, creative professional, and computer professional.

The guidelines for these classifications are very specific. To qualify for these "white-collar" exemptions, employees generally must meet the following three tests (Note that there are some exceptions):

**1. Salary level** — an exempt employee must earn a minimum amount of \$455 per week

(\$23,660 annually).

**2. Salary basis** — The minimum amount must be paid on a salary (or fee) basis.

**3. Job duties** — Exempt employees must perform certain executive, administrative, or professional job duties as set forth in the regulations. ***Job titles and descriptions do not determine exempt status, actual job duties must meet all the Department of Labor's requirements.***

**Work Time:** Since non-exempt employees must be paid for all work hours and overtime pay must be paid for hours worked over 40 in a workweek, it is important to define what is considered to be "work time."

Work time is defined as all time that an employee must be on duty, on the employer's premises, or at any other prescribed place of work. Also included is any additional time the employee is "allowed" to work.

For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and they are compensable.

**Protecting Exempt Status:** Once a position is classified as exempt, you must protect the exempt status. Being paid on a salary or fixed basis means an employee regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. There are ***very limited circumstances under which you can "dock" an exempt employee's pay.***

This is a very brief summary. If you need assistance with understanding the FLSA and/or state wage/hour requirements or want help determining the proper FLSA classification evaluation for your positions, feel free to send us an email.

**"However, paying an employee on a salary basis does not, by itself, make him/her exempt from the FLSA overtime provisions."**



Charting the course for business success

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**The right human resource decision today  
improves your profitability tomorrow.**

**SWS helps organizations to:**

- Improve individual and organizational performance
- Identify and resolve HR/OD challenges
- Build effective leaders and teams



## Strategic Workplace Solutions News

At SWS, we help you chart your course for business success. We can help you:

- ⇒ *Save time and money*—supplement your internal expertise and/or availability instead of filling another position
- ⇒ *Reduce HR-related liability*—learn about and comply with related laws and regulations
- ⇒ *Stabilize your organization and position it for change*—turn your plans into results

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Carolyn Worthington and Carol Rovello presented a program on ***Building an Ethical Organization*** for the Western North Carolina Human Resource Association at its August meeting. If you would like a copy of the handouts, you can go to: [www.strategic-workplace-solutions.com/about/hr-resources](http://www.strategic-workplace-solutions.com/about/hr-resources).

Carol Rovello was asked to make a presentation at two state conferences that will be held in the Asheville area this fall. She will facilitate a presentation on ***HR Basics for Small Business*** for the Small Business Technology Development Center counselors/consultants located at SBTDC offices throughout the state and ***Building an Ethical Organization*** sponsored by NC FARO for leaders of mental health agencies located throughout the state.

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Each year, National Hispanic Heritage Month is celebrated from September 15 through October 15. Today, according to the U.S. Census Bureau, more than 44 million people in the United States are of Hispanic origin. That's about 14 percent of us! If you have a diverse workplace, remember that SWS offers HR assistance and documents in Spanish as well as English.