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EEO-1 Pay Data Collection Reinstated

On March 4, a federal judge vacated OMB's 2017 stay of the EEOC's revised EEO-1 form that would have required employers to provide employee pay and hours worked information by race, gender, and ethnicity in addition to data already being collected. It is not yet clear what impact the ruling may have on the current reporting period, which is slated to open soon, or whether the government will appeal.

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Background

Federal regulations require all private employers with 100 or more employees — and federal contractors or first-tier subcontractors with at least 50 employees and a federal contract, sub-contract, or purchase order amounting to \$50,000 or more — to annually file the Employer Information Report EEO-1 with the U.S. Equal Employment Opportunity Commission's (EEOC's) EEO-1 Joint Reporting Committee. The EEO-1 Report contains employee race, ethnicity, and gender data by job category.

In 2016, the EEOC finalized revisions to the EEO-1 Report that would have required employers with 100 or more employees to provide summary pay and total hours worked in addition to the sex, race, ethnicity, and job category data already being collected, starting with the 2017 filing. The EEOC stated that the revised EEO-1 requirements would help the agency better enforce federal equal pay laws. (See our [October 6, 2016 For Your Information.](#))

Before the 2017 filing was due, the Office of Management and Budget (OMB) stayed the expanded EEO-1 reporting requirements under the Paperwork Reduction Act, and the EEOC confirmed that employers should not submit aggregate pay and hours worked data on the filing. (See our [September 29, 2017 For Your Information.](#)) Advocacy groups, including the National Women's Law Center, filed a legal challenge claiming OMB lacked authority under federal administrative law to stay the EEOC's expanded pay data collection.

D.C. court reinstates pay data collection

On March 4, the U.S. District Court for the District of Columbia vacated OMB's stay of the EEOC's expanded EEO-1 reporting requirements and ordered the revised form finalized under the Obama administration to take effect. Finding that OMB failed to follow its own regulations in implementing the stay and that its decision to stay the pay data collection "totally lacked the reasoned explanation" federal law requires, Judge Tanya S. Chutkan concluded that the agency's action was arbitrary and capricious.

Finding it unlikely that the government could justify its decision on remand, Judge Chutkan held that setting aside the OMB stay was appropriate and ordered the immediate reinstatement of the revised EEO-1 report that collects pay data. The judge dismissed arguments that doing so would cause disruption, saying they were unsupported by the record.

The EEO-1 survey site for 2018 filings was slated to open early this month, and the current deadline to submit 2018 EEO-1 data is May 31, 2019. (See our February 4, 2019 FYI Alert.) Whether employers will have to comply with that date remains to be seen. The government is expected to appeal and seek a stay of Judge Chutkan's ruling pending appeal. The EEOC has not yet issued a statement on pay data collection but it is expected to provide further direction for employers in the near future.

In closing

Employers should continue to monitor legal developments and look for guidance from the EEOC on upcoming filing deadlines and requirements in light of this ruling.

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