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EEO-1 Pay Data Collection Update

Last month, a federal judge vacated OMB's 2017 stay of the EEOC's revised EEO-1 form that would have required employers to report employee pay data in addition to the data that has historically been collected. On April 3, the EEOC informed the court that it could undertake and complete the required pay data collection by September 30, 2019, but only if it used an outside contractor. Whether the court will accept the EEOC's plan remains to be seen.

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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 (Component 1 data).

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 (Component 2 pay data) in addition to the demographic data already being collected, starting with the 2017 filing. After the Office of Management and Budget (OMB) stayed the expanded data collection, the EEOC instructed employers not to submit aggregate pay and hours worked data on the 2017 filing. (See our [September 29, 2017 For Your Information](#).) Advocacy groups challenged the stay.

On March 4, 2019, Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia vacated the stay and ordered the immediate reinstatement of the expanded EEO-1 report. (See our [March 6, 2019 FYI Alert](#).) At a March 19 status conference, the judge directed the EEOC to provide information by April 3 about how the agency would put the pay data collection into effect.

EEOC update

In an April 3 court filing, the agency proposed requiring employers to submit 2018 Component 2 data by September 30, 2019. It also proposed not requiring employers to report 2017 pay data.

In the filing, the EEOC highlighted the “significant practical challenges” it faces in collecting Component 2 pay data. Noting that “modifying its current processes is not currently a viable option for collecting Component 2 data from employers,” the agency concluded that its only alternative is to use a data and analytics contractor for the pay data collection at a cost of more than \$3 million.

Before the court weighs in, the plaintiffs in the underlying case will have an opportunity to respond to the EEOC’s submission. It is also possible that the government may appeal the court’s March 4 ruling reinstating the pay data collection.

Whether employers will have to comply with a September 30, 2019 — or other — deadline to submit Component 2 pay data remains to be seen. At least for now, the deadline for employers to submit Component 1 data remains May 31, 2019. (See our [February 4, 2019 FYI Alert](#).)

In closing

Employers should continue to monitor developments. While awaiting further guidance, employers should consider how they would meet reporting requirements if 2018 Component 2 data had to be compiled and filed by September 30, 2019.

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