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Court to EEOC: continue collecting EEO-1 pay data

Last April, a federal judge ordered the EEOC to take all necessary steps to complete EEO-1 Component 2 pay data collections for 2017 and 2018 by September 30, 2019. Last month, the EEOC asked the court to declare the data collection complete and allow it to close the reporting portal. On October 29, the court ruled the data collection incomplete and ordered it to remain open until further notice.

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Background

Federal regulations require private employers with 100 or more employees — and federal contractors or subcontractors with at least 50 employees and a federal contract, sub-contract, or purchase order of \$50,000 or more — to submit the Employer Information Report EEO-1 to the U.S. Equal Employment Opportunity Commission's (EEOC's) EEO-1 Joint Reporting Committee annually. The filing 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 also have required employers with 100 or more employees to provide summary pay and total hours worked data (Component 2 data). However, the Office of Management and Budget stayed the expanded data collection before it took effect. (See our [September 29, 2017 FYI](#).)

Earlier this year, a federal judge vacated the stay and, in a series of rulings, ordered the EEOC to reinstate the expanded EEO-1 report and collect two years of pay data. (See our [March 6](#) and [April 5, 2019 FYI Alerts](#).) On April 25, the court ordered the agency to “take all steps necessary to complete the EEO-1 Component 2 data collections for 2017 and 2018 by September 30, 2019.” The court said it would not consider the collections complete “until the percentage of EEO-1 reporters that have submitted their required EEO-1 Component 2 reports equals or exceeds the mean percentage of EEO-1 reporters that actually submitted EEO-1 reports in each of the past four reporting years.”

On July 15, the EEOC opened a web-based portal for the expanded pay and hours worked collection. Consistent with its current practice regarding Component 1 data, the EEOC indicated that it would continue to collect Component 2 data for a six-week period after September 30, 2019, or

through November 11, 2019. Based on its calculations, the EEOC expected the data collections would be “complete” when 72.7% of Component 2 reports had been filed.

Court extends Component 2 data collection

Last month, the EEOC informed the court that more than 81% of eligible filers had submitted their data for calendar years 2017 and 2018 and asked it to deem the data collections complete. The court rejected that motion on October 29, 2019, stating that the data collection will not be complete until it reaches what the court determines to be an acceptable reporting threshold. Further, the court ordered the data collection to remain open after November 11 and the EEOC to “take all steps necessary to complete the EEO-1 Component 2 data collection for calendar years 2017 and 2018 by January 31, 2020.” In the meantime, the EEOC will have to provide status reports to the court every three weeks and indicate whether it is on track to complete its data collection by that date.

In closing

The pay data reporting portal remains open to accept Component 2 submissions from filers, and the data collections will continue until further notice. In view of that, the EEOC encourages employers that have not yet filed to do so as soon as possible.

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