

EEO Pay Data Update: Employers Must Submit Component 2 of the EEO-1 Reports for Both Calendar Years 2017 and 2018 by September 30, 2019

Labor & Employment Law Update

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EEO-1 report filers should prepare to submit Component 2 pay data for both calendar years 2017 and 2018 by September 30, 2019. As we previously reported, the U.S. District Court for the District Court of Columbia previously ruled that employers must submit pay data for calendar year 2018 by September 30, 2019. In this ruling, the court also presented the EEOC with the option to either collect pay data for calendar year 2017 or calendar year 2019. The EEOC recently announced that it will collect pay data for calendar year 2017. **Pay data for both 2017 and 2018 will be due September 30, 2019.**

The EEOC will begin collecting employer's pay data for 2017 and 2018 beginning in mid-July 2019. Filers should continue to use the EEOC's online portal to report Component 1 data of the EEO-1 reports, which is due by May 31, 2019 unless the employer has received an extension.

In light of the September 30 deadline, employers should begin preparing to submit their pay data – a new process that, for many employers, requires compiling information from two different systems if payroll records are maintained separately from a human resources information system. Recent court rulings and EEOC decisions have created a bit of a moving target as employers work to comply with this new EEO-1 reporting obligation. While we await further information and guidance from the courts and the EEOC, it is helpful to look to the previously approved plan that the EEOC had in place in January 2016 prior to the OMB's stay as a reference point:

- **Who needs to file Component 2 pay data?** EEO-1 filers with 100 or more employees (both in the private industry and federal contractors and subcontractors)

- **What pay data will be collected?** The EEOC sought to collect aggregate W-2 data in 12 pay bands for the 10 EEO-1 job categories. The EEOC advised that employers “will simply count and report the number of employees in each pay band. For example, a filer will report on the EEO-1 that it employs 3 African American women as professionals in the highest pay band.”
- **Will employers also need to report the hours worked by employees?** Yes. The EEOC previously stated that hours-worked data will be reported to account for part-time and partial year employment. The EEOC indicated that it would allow employers to use a proxy of 40 hours per week for full-time employees who are exempt under the Fair Labor Standards Act if the employer does not maintain accurate records on hours worked for these employees.
- **Should employers track the staff time spent to collect and report this pay data?** Yes. The EEOC had previously indicated that it would request employers to provide the amount of time spent on complying with Component 2 obligations in order to quantify this survey’s burden on employers.
- **What will the EEOC do with this pay data?** The EEOC has previously suggested that it will use the pay data to improve its enforcement efforts to combat pay discrimination, identify trends, and help employers assess their pay policies and practices. While the EEOC represented that EEO-1 pay data will not be used as the sole basis to find discrimination, the agency stated that the data will be used to better focus its resources and investigations, and that a finding of discrimination could come after an investigation. Employers should audit their pay practices in advance of submitting the EEO-1 pay data. Following the audit, employers should remedy any pay inequities for female or minority workers completing the same work as others outside their protected classes, if the disparate pay cannot be easily explained by a legitimate, lawful reason.

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