

Update on the EEO-1 Pay Data Reporting

Labor & Employment Law Update

on April 8, 2019

On April 3, 2019, the EEOC informed a federal district court that the earliest it could complete its collection of pay data from covered employers as part of their EEO-1 data reporting obligations is September 30, 2019. The court still needs to rule on the EEOC's proposed plan and, therefore, employers have not received a final deadline by which to file the required pay data. However, this filing brings employers one step closer to an answer for an issue that has caused them justified concern given the significant time and resources that will be needed to collect this pay data.

Here is a quick refresher on the course of events that led up to the EEOC's April 3 filing:

- Since 1966, the EEOC has required covered employers to submit an Employer Information Report EEO-1 form, providing data on the number of individuals employed by job category, sex, race, and ethnicity (known as Component 1 of the EEO-1 report). More information on Component 1 reporting can be found in one of our previous blog posts.
- In 2010, the EEOC commissioned a study to identify ways to improve prohibiting pay discrimination and found that there was potential value in collecting pay data in connection with the EEO-1 reports.
- In order to collect this type of data, the EEOC needed approval from the Office of Management and Budget (OMB). In September 2016, the OMB approved the EEOC's proposed collection of pay data (known as Component 2 of EEO-1 reports). Under this approval, employers would first be required to submit the required pay data by March 2018.
- In August 2017, the OMB stayed the implementation of Component 2 of the EEO-1 reports, with instructions that employers still comply with Component 1 reporting requirements.
- In November 2017, two nonprofit organizations that advocate for equal pay for women and Latino workers filed a lawsuit, *National Women's Law Center et al. v. OMB et al.*, challenging the stay in the U.S. District Court for the District of Columbia.
- In March 2019, the court vacated OMB's stay of the Component 2 reporting requirement and provided that the OMB's prior approval of the EEOC's collection of pay data "shall be in effect."

- The court then asked the EEOC to propose how it would undertake and close the collection of pay data now that Component 2 requirements are back in effect.

That brings us to the EEOC's recent April 3 filing. The EEOC informed the court that its current data processes are not capable of collecting employers' Component 2 data. Instead, the EEOC will need to rely on an outside data and analytics contractor. The EEOC warned that an expedited collection of this pay data may produce poor quality data for the 2018 calendar year, and that quality concerns will be compounded if employers are also required to provide pay data for calendar year 2017. The court still needs to decide several unanswered questions, such as when employers need to submit their pay data, when the EEOC needs to complete its data collection, and whether employers need to submit pay data for 2017. Check back on this blog for updates.

In the meantime, all employers should ensure that they meet the May 31, 2019 deadline for providing Component 1 of the EEO-1 reports and begin the significant effort of preparing the pay data that will ultimately need to be submitted.

Update on the EEO-1 Pay Data Reporting