

April 15, 2019

EEOC Pay Data Rule

EEO-1 Data Update: Uncertainty Remains as to When Employers May Be Required To Submit EEO-1 Pay and Hour Data for 2018.

On March 4, 2019, the Honorable Tanya S. Chutkan of the U.S. District Court for the District of Columbia vacated a decision by the Office of Management and Budget (the “OMB”) that had stayed a requirement adopted by the EEOC during the Obama administration that would have required employers to use a revised EEO-1 form to report pay data information by employee job position, gender, race and ethnicity (the so-called “Component 2 Data”). As a result of the ruling, the revised EEO-1 form is technically in effect. (See our [March 21, 2019 memorandum](#) for further discussion of Judge Chutkan’s decision.)

After that ruling, the EEOC opened its portal to permit employers to submit the usual Component 1 EEO-1 demographic data (“Component 1 Data”) until May 31 (two months later than the usual March 31 deadline) but omitted a request for Component 2 Data. The next day, Judge Chutkan directed the EEOC to notify the court by April 3 how and when it intended to collect the Component 2 Data.

On April 3, the EEOC informed the court that it intended to require employers to submit Component 2 Data for 2018 by September 30, 2019, citing the need to address “the significant practical challenges for the EEOC to collect [the Component 2] data in response to the Court’s order,” including the need to outsource the data collection to a contractor due to limitations in the EEOC’s data collection processes. The next day, the Chamber of Commerce and other pro-business groups submitted an amici brief arguing that employers would require at least 18 months to collect the Component 2 Data on a prospective basis and that collecting past data would be “impractical” in light of the “the financial burden, operational challenges, and confidentiality protections applicable to collection” of pay data. The amici also raised concerns about the ability of the EEOC to maintain the confidentiality of the Component 2 Data.

In response, on April 8, the plaintiffs in the litigation asked the court to direct the EEOC to develop a plan to require employers to submit Component 2 Data by May 31.

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The court is likely to issue a ruling in short order, particularly if it intends to require the EEOC to collect Component 2 Data sooner than the EEOC's chosen date of September 30, 2019. The portal to submit Component 1 Data remains open, and employers should be prepared to submit that data by the May 31 deadline announced by the EEOC. In the interim, employers may choose to begin preparations for submitting Component 2 Data. If the court were to require the EEOC to collect 2018 pay data in the near term, there may of course be a possibility of appellate review of that decision.

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