

PUBLICATION

U.S. District Court for the District of Columbia Lifts OMB's Stay of the Revised EEO-1's Component 2 Data Reporting Requirements

May 22, 2019

Filing annual Employer Information Reports (EEO-1) with the Equal Employment Opportunity Commission (EEOC) is not a new task for most medium- and large-sized employers. In fact, employers with 100 or more employees, and federal contractors/subcontractors with 50 or more employees, have been required to submit annual EEO-1 reports, which identify the number of employees working for the company by job category based on race, sex and ethnicity, since the earliest days of the EEOC's enforcement of Title VII of the Civil Rights Act of 1964.

Many employers also remember that in 2016, under the Obama Administration, the EEOC finalized regulations expanding the information collected in the annual EEO-1 report to include pay data. This expanded requirement became known as "Component 2" of the EEO-1. More specifically, employers would be required as part of Component 2 to collect aggregate W-2 earnings and report the number of employees in each of twelve specific pay bands for the ten EEO-1 job categories, classified by race, sex and ethnicity. Moreover, the employers were also required to report the total hours worked during the year by these same categories.

The new reporting requirements making up Component 2 were immediately and widely criticized by employers who claimed that the collection of W-2 earnings, without any context to explain legitimate non-discriminatory reasons for pay disparities (e.g., education, training, experience, tenure, merit, etc.) would unnecessarily open the door to increased EEOC scrutiny and investigations. Hearing these concerns, the Trump Administration's Office of Management and Budget (OMB) issued a memorandum in 2017 announcing the immediate stay of the required use of the revised EEO-1 form. According to the OMB, aspects of the new form "lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues."

The OMB's stay remained in effect until March 4, 2019, when the U.S. District Court for the District of Columbia vacated the stay as part of an opinion issued in a lawsuit filed against the EEOC and the OMB by several advocacy groups, including the National Women's Law Center, in furtherance of their mission to close the gender wage gap by educating the public and policymakers about pay disparity in the workplace. Specifically, the D.C. District Court found that the OMB's stated concerns directly contradicted the EEOC's findings when it issued the regulations in 2016 and the OMB failed to explain these inconsistencies or provide a reasoned explanation for changing its policy. The Court noted that employers had more than a year to collect pay data before the OMB issued the stay, so the reinstatement of the pay data reporting requirement should not have disruptive consequences.

After the D.C. District Court's March 4 opinion, the EEOC requested court approval to extend the deadline for employers to report Component 2 data until September 30, 2019 – later than the deadline for other EEO-1 data, which remains due May 31, 2019. In an Order on April 25, the Court granted the EEOC's request, but ruled that the EEOC must "immediately take all steps necessary to complete the EEO-1 Component 2 data collections for calendar years 2017 and 2018 by September 30, 2019." The Court also gave the EEOC an option of foregoing Component 2 data collection for the year 2017, in favor of collecting the same data for the year 2019.

As part of the Court's rulings detailed above, the EEOC was required to provide notice on its alerting employers of the new EEO-1 pay data requirement. As ordered, the following amended notice was posted on the EEOC's website on May 3, 2019:

Notice of Immediate Reinstatement of Revised EEO-1: Pay Data Collection for Calendar Years 2017 and 2018

EEO-1 filers should begin preparing to submit Component 2 data for calendar year 2017, in addition to data for calendar year 2018, by September 30, 2019, in light of the court's recent decision in National Women's Law Center, et al., v. Office of Management and Budget, et al., Civil Action No. 17-cv-2458 (D.D.C.). The EEOC expects to begin collecting EEO-1 Component 2 data for calendar years 2017 and 2018 in mid-July, 2019, and will notify filers of the precise date the survey will open as soon as it is available.

On May 3, 2019, the Department of Justice filed a Notice of Appeal in National Women's Law Center. The filing of this Notice of Appeal does not stay the district court orders or alter EEO-1 filers' obligations to submit Component 2 data. EEO-1 filers should begin preparing to submit Component 2 data as described above.

Filers should continue to use the currently open EEO-1 portal to submit Component 1 data from 2018 by May 31, 2019.

As indicated by the EEOC's notice above, the OMB has appealed the D.C. District Court's recent rulings. Additionally, the U.S. Senate confirmed Janet Dhillon on May 8 to become the new chair of the EEOC, which could potentially pave the way for additional change down the road. However, unless and until the U.S. Court of Appeals for the D.C. Circuit enters an Order stating otherwise, employers must still prepare to comply with the new Component 2 requirements by September 30, 2019.

For additional information regarding EEO-1 reports, please contact any member of Baker Donelson's [Labor & Employment Group](#).