

EEOC Provides Update on EEO-1 Pay Data Reporting Plans

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September 30, 2019, is the earliest the Equal Employment Opportunity Commission (EEOC) could collect pay data from employers in the EEO-1 report, the agency advised the federal district court in the District of Columbia on April 3, 2019. *National Women's Law Center et al. v. Office of Management and Budget et al.*, No. 17-2458.

The EEOC also stated its intention to adjust the collection deadline for 2018 pay data (Component 2) through that date. The deadline to submit race, ethnicity, and gender data (Component 1) remains May 31, 2019.

Status Report

The court had ruled on March 4 that the EEOC's pay data collection provisions (requiring covered employers to report pay information by race, ethnicity, and gender) in the EEO-1 report should be "immediately reinstated." The Office of Management and Budget (OMB) had suspended those provisions in 2017.

At a status conference on March 19, the court inquired about how the EEOC and OMB plan to comply with its decision. The court set a briefing schedule of April 3 for the agencies to advise it of their intentions and April 8 for the plaintiffs to respond.

In a status report titled "Notice of Defendants' Submission in Response to the Court's Questions Raised During the March 19, 2019 Status Conference," the EEOC noted that the authorization to collect pay data was for a three-year term ending September 30, 2019, and that the EEOC was authorized to collect pay data two times during that term — 2017 pay data and 2018 pay data. The EEOC stated it does not have the capabilities to collect pay data, relying upon the Declaration of its Chief Data Officer. The EEOC said that, in order to collect 2018 pay data by September 30, 2019, it must engage a third-party vendor (NORC) at a cost of \$3 million to modify the agency's data collection capabilities. Even then, the agency noted there will be significant data quality control issues.

The plaintiffs have until April 8 to respond to the EEOC's stated plans for pay data collection. Numerous employer organizations, including the U.S. Chamber of Commerce, have submitted friend-of-the-court briefs asserting that any pay data collection should occur in 12-18 months, at the earliest.

Next

It is clear from the EEOC's status report that the agency is not equipped to begin pay data collection by May 31, 2019, and intends to delay pay data collection until September 30, 2019, at the earliest. Still, it remains possible that the court's original March 4 ruling reinstating the pay data collection may be appealed.

Employers should submit the Component 1 EEO-1 report data as required by May 31, 2019. Component 2 pay data likely will need to be submitted at a later date and

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employers should be prepared.

We will continue to monitor and report on developments. Please contact Jackson Lewis with any questions.

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