

# Eye on Washington Regulatory Update

## Employers Must Submit EEO-1 Pay Data to EEOC By September 30, 2019

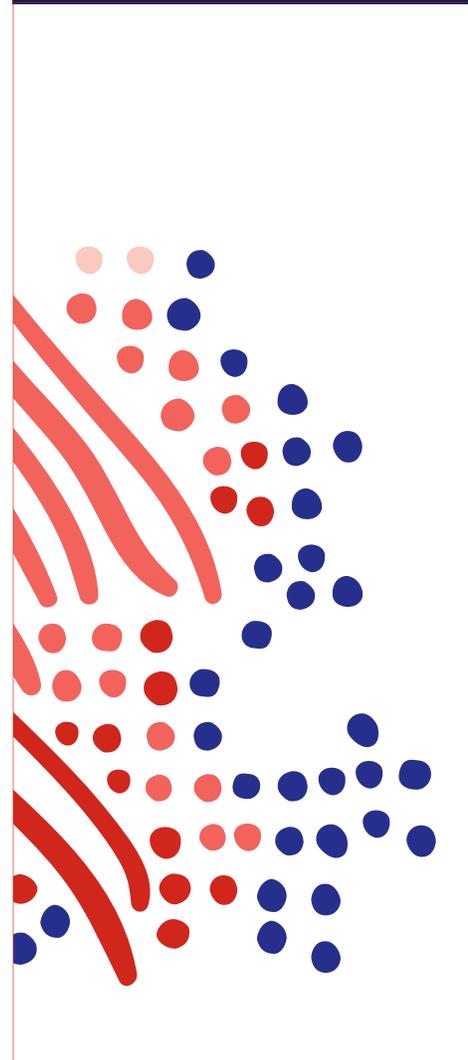
On April 25, 2019, a federal judge ordered the Equal Employment Opportunity Commission (“EEOC” or the “Commission”) to take all necessary steps to comply with an Obama-era change to EEO-1 data collection obligations by September 30, 2019. These new obligations increase the amount of information employers are required to collect and report to the EEOC, including pay data called “Component 2” data. Component 2 data includes wage and hour data for employees broken down by race/ethnicity and gender. According to early EEOC rulemaking, these new data sets were added to enable statistical analyses of potential discrimination, focusing investigations and identifying employers with potential pay disparities that may warrant further investigation. The EEOC also noted that such analyses of pay data would enable employers to self-assess their pay practices and policies.

### Background

On September 29, 2016, the EEOC issued a press release and related materials that modified employers’ annual EEO-1 reporting obligations to include Component 2 pay data. Initially, employers with 100 or more employees were expected to file the new EEO-1 Report in March 2018, with data for the 2017 calendar year. On August 29, 2017, however, the Office of Management and Budget (“OMB”) announced that the employer pay data reporting obligations — Component 2 of the annual EEO-1 Report — were suspended indefinitely. In explaining its decision, OMB pointed out that the EEOC’s data file specifications for employers to use in submitting the new report had not been included in any Federal Register and, thus, the public had not had the opportunity to comment. In addition, the EEOC’s estimate of the burden on employers for the new report did not take into account these specifications. Further, the OMB stated that there was “good cause” to stay the effective date of the report, because it believed that portions of the new report “lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues.”

Nonprofit organizations immediately filed a challenge to the OMB’s decision to stay the previously approved pay data collection. In a March 4, 2019 order, the U.S. District Court of the District of Columbia (the “Court”) issued an order lifting the stay issued by the OMB in 2017, regarding the EEOC’s collection of pay data. The Court concluded that the OMB failed to demonstrate good cause for staying implementation of the previously approved changes to the annual EEO-1 Report.

The Court held a series of hearings, subsequent to its March 4 order, to determine how and when the EEOC should commence collecting pay data. Pursuant to the Court’s April 25 order,



# Eye on Washington

## Regulatory Update

employers will have until September 30, 2019 to submit Component 2 data to the EEOC. Several other key items remain open, but should be addressed in the days and weeks to come.

### What does this mean for employers?

The EEOC's 2018 EEO-1 survey portal opened on Monday, March 18, 2019, and the deadline to submit Component 1 data has been extended to May 31, 2019. The Court ordered the EEOC to accept Component 2 data by September 30, 2019 and, no later than April 29, 2019, post a statement on its website and publish in the Federal Register that it will be collecting such data.

The plaintiffs demanded that the EEOC be ordered to collect Component 2 data from 2017 as well as 2018, but the Court allowed the EEOC a small bit of leeway on this. It ordered the Commission to — at its option — either accept 2017 pay data along with 2018 pay data by September 30, 2019, or notify the Court by May 3, 2019 that it will collect EEO-1 pay data for 2019 in the 2020 reporting period. The Court further ordered that — beginning May 3, 2019 and every three weeks thereafter — the Commission must file reports demonstrating all steps taken to enable it to accept 2018 Component 2 data by September 30, 2019.

We are still waiting for firm guidance from the EEOC on precisely how and when they will be ready to accept 2018 Component 2 data from employers. We are also waiting for guidance on whether the EEOC will also collect 2017 Component 2 data by September 30, 2019, or whether it will instead collect 2019 Component 2 data in the 2020 reporting cycle. It is also possible that the judge's order lifting the stay will be appealed, and the stay could be reinstated pending appeal.

### Call to Action

The deadline for employers to submit Component 1 data remains unchanged, so employers should plan to submit that information by May 31. ADP® will continue to closely monitor developments related to Component 2 data and update clients on this topic, as more information becomes available.

As a reminder, please subscribe to ADP's Eye on Washington (<https://www.adp.com/resources/articles-and-insights/adp-research-institute/research-topics/legislative-updates.aspx>) for initial updates.

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