

Eye on Washington Regulatory Update



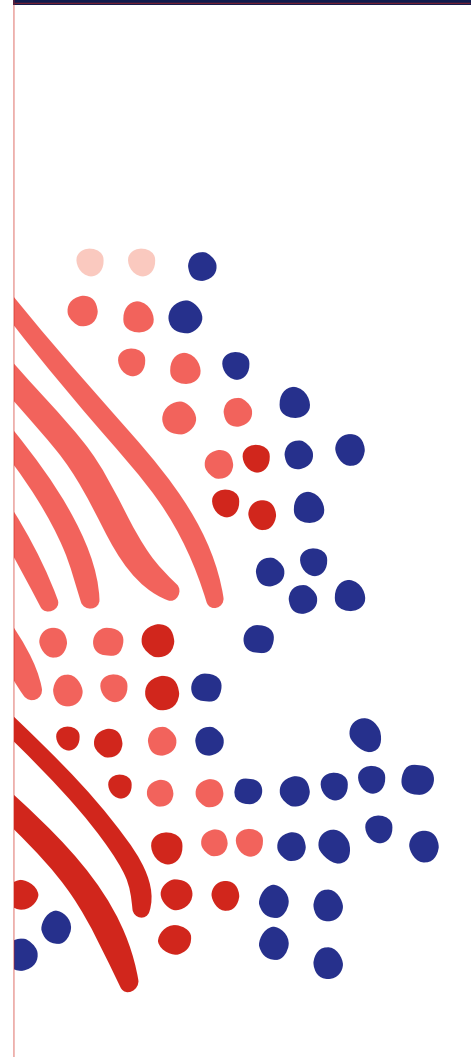
Court Reinstates EEO-1 Pay Data Reporting Requirement

On March 4, 2019, a federal court issued an order lifting the stay issued by the Office of Management and Budget (OMB) in 2017 regarding the Equal Employment Opportunity Commission's (EEOC) 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. Based on this order, employers need to comply with the reinstated pay data reporting requirements, possibly as soon as the current deadline for 2018 EEO-1 reporting (May 31, 2019). The EEOC is expected to issue guidance in the near future on the timing and format of the newly reinstated reporting requirement.

Background

On September 29, 2016, the EEOC issued a press release and related materials that modified employers' annual EEO-1 reporting obligations to include pay data. The pay data reporting obligations, included in a revised EEO-1 Form, included new requests for wage and hour data for employees, broken down by race/ethnicity and gender. These new obligations increased the amount of information employers were required to collect and report to the EEOC. Details on the changes can be found in a previous *Eye on Washington*, [Pay Equity: Revised EEO-1 Report to Include Pay Data and Hours](#).

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, 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, and that the EEOC's estimate of the burden on employers for the new report did not take into account these specifications. Further, 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 ►



Eye on Washington

Regulatory Update

address privacy and confidentiality issues." Details on the suspension can be found in a previous *Eye on Washington*, **EEO-1 Update: Employers No Longer Need to Submit Wage and Hours Worked Information.**

Nonprofit organizations immediately filed a challenge to 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") concluded that OMB's stay of the pay data collection was "arbitrary and capricious" and "illegal," because, among other reasons, OMB failed to prove that the original burden estimates were wrong, and its "cause" rationale contradicted EEOC's prior conclusion that the proposed pay data collection had practical utility and adequate privacy safeguards.

The Court ordered that the previous approval of the revised EEO-1 Form, including the pay data collection requirements, shall be in effect.

What does this mean for employers?

The EEOC's 2018 EEO-1 survey portal will open on Monday, March 18, 2019, and the deadline to submit EEO-1 data has been extended to May 31, 2019. We are still waiting to hear guidance from the EEOC on whether employers are required to submit pay data information with the 2018 EEO-1 Form or if pay data reporting will begin at a later date. It is also possible that the judge's order lifting the stay will be appealed, and the stay could be reinstated pending appeal. Employers should be on the lookout for EEOC guidance on this topic, including the effective date.

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