

Eye on Washington

Regulatory Update

Equal Employment Opportunity Commission Pay Data Reporting Update

As previously reported, on May 3, 2019, the Equal Employment Opportunity Commission (“EEOC”) announced that certain EEO-1 filers are required to provide 2017 and 2018 wage and hour data broken down by race/ethnicity and gender (“Component 2 data”) by September 30, 2019. (Component 2 requirements apply only to private employers, including federal contractors and first-tier subcontractors, with 100 or more employees.) The same day the EEOC announced this decision, the Department of Justice (“DOJ”) filed a Notice of Appeal of the **federal court’s April 25, 2019 order reinstating the Component 2 data reporting obligation.**

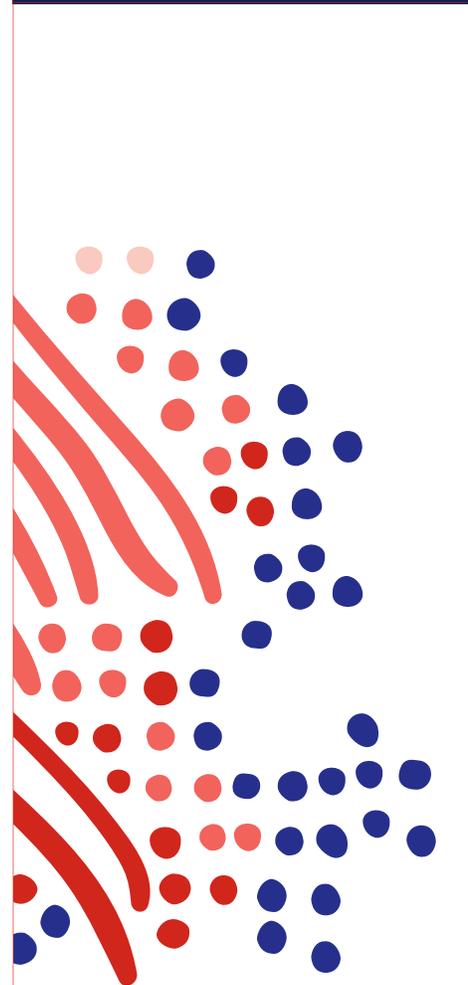
The EEOC has **posted a statement on its website** advising affected EEO-1 filers that the Notice of Appeal does not impact their obligation to submit Component 2 data for 2017 and 2018 by September 30, 2019.

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, the 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 “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. On April 25, 2018, the Court ordered the EEOC to collect Component 2 data by September 30, 2019. Pursuant to the Court’s



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April 25 order and **the EEOC's May 3, 2019 announcement**, private employers — including federal contractors and first-tier subcontractors — with 100 or more employees have until September 30, 2019 to submit 2017 and 2018 Component 2 data to the EEOC. On May 3, 2019, the DOJ — on behalf of the OMB and EEOC — filed a Notice of Appeal of the April 25 order.

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 is May 31, 2019. The deadline for covered employers to submit both 2017 and 2018 Component 2 data is September 30, 2019. The DOJ's recent appeal of the Court's April 25, 2019 order does not impact or stay the September 30, 2019 deadline to submit Component 2 data. Affected EEO-1 filers should be prepared to submit Component 2 data by that date.

The EEOC has stated that it is currently on track to open Component 2 data collections for calendar years 2017 and 2018 from July 15, 2019 through September 30, 2019. However, we are waiting for definitive guidance from the EEOC on precisely how and when it will be ready to accept 2017 and 2018 Component 2 data from employers.

Call to Action

The deadline for employers to submit Component 1 data remains unchanged, so employers should submit that information by May 31, 2019. Employers should start preparing to gather Component 2 data, but realize that the EEOC still needs to issue guidance, a sample of the new EEO-1 form, and file specifications. The EEOC will be using a third-party vendor to handle the data collection which may also affect how the EEOC collects the required data. ADP® is closely monitoring all EEOC activity, related to the reinstatement of the EEO-1 Component 2 data collection requirement, and will provide updates as information is made available.

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