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Client Alert: EEOC Requires 2017 and 2018 Component 2 Pay Data by September 30

As of July 15, 2019, the Equal Employment Opportunity Commission (EEOC) is equipped to accept 2017 and 2018 Component 2 EEO-1 reports from covered employers. Currently, employers who wish to submit this data now can do so via manual entry into an online form. According to the EEOC's website, employers will have the alternative option to upload this data, via a specifically formatted CSV file, in mid-August. Employers with 100 or more employees are required to provide this Component 2 data to the EEOC by **September 30, 2019**. Unlike the requirements for Component 1 data, however, federal contractors with fewer than 100 employees are not required to file a report.

Commonly referred to as "pay data," Component 2 reports will be comprised of two sections. The first section will detail the number of employees, broken down by job category, racial/ethnic group and salary band. The job category and racial/ethnic group options will be based on the same definitions used in Component 1 EEO-1 reports. As to the salary bands, the EEOC has provided twelve (12) options ranging from "\$19,239 and under" to "\$208,000 and over."

In the second section, employers will detail the aggregate number of hours worked per category. For example, if in the first section an employer reports a total of five (5) "Sales Workers" who identify as "Native

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Hawaiian or Other Pacific Islander,” the employer will next calculate the total number of hours worked by those five (5) employees in the applicable calendar year.

Although this is the first time employers will be subject to this reporting requirement, the EEOC first approved the expanded EEO-1 report in 2016. Originating under the Obama administration, the proposal was put on hold indefinitely by the Office of Management and Budget in 2017, after President Trump’s appointment of OMB Director Mick Mulvaney. Shortly thereafter, a number of associations geared towards protecting workers’ rights filed a lawsuit in the U.S. District Court for the District of Columbia seeking to reinstate the Obama-era proposal and corresponding requirements for employers. In March 2019, the Federal judge granted relief for the plaintiff organizations and directed the EEOC to enable collection of this data for calendar years 2017 and 2018. *Nat’l Women’s Law Ctr. v. OMB*, 358 F. Supp. 3d 66 (D.D.C. 2019).

Akin to the Component 1 EEO-1 requirements, employers will select one pay period between October 1st and December 31st for reporting purposes. The EEOC’s guidance is clear that employers with an aggregate workforce that fluctuates around 100 employees are not required to select a pay period during which it employed 100 or more employees. As such, many employers may be “covered” employers subject to the reporting requirements for only one of the requisite calendar years, but not both.

It is worth noting that, on May 3, 2019, the Department of Justice filed a Notice of Appeal of the District Court’s decision. However, the EEOC’s website currently notes that the impending appeal “does not stay the district court orders or alter EEO-1 filers’ obligations to submit Component 2 data.” In light of this directive, covered



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employers should begin compiling the requisite reports, to be ready for the **September 30, 2019** deadline.

If you have any questions concerning this reporting requirement, including but not limited to determining whether your organization is covered, do not hesitate to contact Corinne Biller, Bill Tarnow, or any other member of Neal Gerber Eisenberg's Labor & Employment group.