

Publication

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EEOC Ends Collection of Component 2 “Pay Data” Reports

The EEOC has officially ended its collection of EEO-1 Component 2 reports, pursuant to a February 10, 2020, Court Order by Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia. According to the EEOC’s website, the online portal through which employers could have submitted such EEO-1 reports will no longer accept any filings as of 5:00 p.m. ET on February 14, 2020.

Commonly referred to as “pay data,” Component 2 reports were designed to detail the employees’ hours worked and pay information from their W-2 forms, broken down into the same categories of gender/racial/ethnic classification options as used in EEO-1 Component 1 reports. Although the Obama administration first proposed collecting this pay data in 2016, the proposal was put on hold indefinitely by the Trump administration in 2017. Shortly thereafter, on November 15, 2017, a number of workers’ rights organizations filed a lawsuit in the District of Columbia seeking to reinstate the Obama administration proposal and corresponding reporting requirements. According to the plaintiffs in that lawsuit and those who supported reinstating the proposal, collecting and analyzing the gender/race/ethnicity data in conjunction with pay data might help to identify and subsequently reduce unlawful pay disparities.

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In March 2019, Judge Chutkan initially ruled in favor of the pro-reporting plaintiff organizations and directed the EEOC to collect the data from the approximately 60,000 covered employers (*i.e.* all U.S. employers with 100+ employees) by a reporting deadline of September 30, 2019. The Court advised that it would not deem data collection to be complete “until the percentage of EEO-1 reporters that have submitted their required EEO-1 Component 2 reports equals or exceeds the mean percentage of EEO-1 reporters that actually submitted EEO-1 reports in each of the past four reporting years.” *See Nat’l Women’s Law Ctr. v. OMB*, Civil Action No. 1:17-cv-02458-TSC (D.D.C.), Dkt. #71. In other words, the Court expected broad and robust reporting compliance and resulting data collection.

On October 8, 2019, the EEOC and co-defendant Federal Office of Management and Budget (“OMB”) filed a Motion seeking a Court Order declaring the agency’s data collection to be complete. Judge Chutkan denied the Motion, finding that the employers’ response rate at that time was insufficient, and the Judge mandated that the EEOC extend the data collection deadline to January 31, 2020.

On December 19, 2019, the EEOC and OMB filed a revised Motion, in which they reported higher employer response rates and detailed the efforts the EEOC had undertaken to increase those response rates since October 2019. After receiving an updated report from the EEOC – which indicated that approximately 89% of eligible reports had been submitted – Judge Chutkan ruled on February 10, 2020 that the EEOC could end its data-collection efforts.

With the conclusion of this lengthy legal battle, employers now will not be responsible for collecting and reporting pay data again...at least in the near future, and not unless a future administration might opt to change course. Indeed, on September 12, 2019, the EEOC



affirmatively stated that it does not plan to collect Component 2 data again because the burden imposed on employers to comply with the reporting obligation far outweighs the utility of the data to the agency. See Agency Information Collection Activities: Existing Collection, 84 Fed. Reg. 48138 (September 12, 2019). Furthermore, the OFCCP later announced that it does not intend to “request, accept or use” the pay data already collected for 2017 and 2018. See Intention Not to Request, Accept or Use Employer Information Report (EEO-1) Component 2 Data, 84 Fed. Reg. 64932 (November 25, 2019). The EEOC, on the other hand, technically is bound by the Court Order to complete its analysis; it remains to be seen when and how the EEOC might do so, and what the findings of that analysis might be.

While the EEO-1 Component 2 data might not be at issue any longer, employers must recall that the obligation to collect and report EEO-1 Component 1 data remains unchanged. Accordingly, all covered employers must file Component 1 data for calendar year 2019 by **May 31, 2020**.

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 William J. Tarnow, Corinne Biller, or any other member of Neal Gerber Eisenberg’s Labor & Employment group.