

## insights

# New ruling requires employers to submit pay data to the EEOC by September 30, 2019

After an April 25 federal court decision, private employers with 100 or more employees and federal contractors with 100 or more employees will have until September 30, 2019 to submit pay data to the Equal Employment Opportunity Commission (EEOC), setting a new deadline for the previously-stayed Obama-era reporting regulation.

### Who it affects:

- Private employers with 100 or more employees.
- Federal contractors with 100 or more employees.

### What it requires:

- Covered employers will need to submit 2018 pay data to the EEOC, including W-2 wage information and total hours worked by gender, race, and ethnicity of employees.
- Employers will also have to disclose the number of employees falling within each of 12 pay bands for each job category, ranging from \$19,239 and under to \$208,000 and over.

### When it is due:

- Currently, September 30, 2019.

### What we do not yet know:

- Whether the EEOC will choose to require either 2017 pay data or 2019 data in addition to 2018 data.
- Whether the Judge's order setting the new deadline will be appealed, and if appealed, whether it will be stayed during appeal.
- When the EEOC will begin accepting Component-2 data through the EEO-1 online portal.

### What it does not do:

- Change the collection date of standard Form EEO-1 data, which is still due on May 31, 2019.

On April 25, 2019, Judge Tanya S. Chutkan for the U.S. District Court for the District of Columbia ordered the EEOC to collect the data for calendar year 2018, requiring employers to supplement their standard EEO-1 filings with detailed pay information sorted by race, ethnicity, and gender. While the reports - known as Component-2 of Form EEO-1 - were originally set to be submitted with employers' regular May 31 EEO-1 filings, Judge Chutkan has set this year's collection date for September 30, 2019, due to delays caused by years of challenges to the regulation's validity.

Component-2 - an employee pay data "snapshot" - was first set to be implemented for the 2017 EEO-1 reporting cycle under the Obama Administration. However, after the administration change, the White House Office of Management and Budget (OMB) stayed the requirement. Employee advocacy groups then sued the OMB, seeking to remove the stay. Over the last few months, Judge Chutkan has entered orders overturning the stay, extending approval for the revised form through April 2021, and requiring the EEOC to take immediate steps to collect the data, notify employers of the new requirements, and make regular reports to the court on its status. Judge Chutkan's April 25 order also requires the EEOC to collect one year of data in addition to 2018: either retrospective data for 2017 due September 30 with the 2018 data or for 2019 due at the normal 2020 EEO-1 reporting period. The EEOC has until May 3, 2019, to decide which year it will collect in addition to 2018.



Although federal contractors with 50 or more employees are required to submit Component-1 data, only federal contractors with 100 or more employees are required to submit Component-2 data. Private employers with more than 100 employees are required to submit both Component-1 and Component-2 data.

The EEOC has noted its concerns that the collection of two years of data will likely result in decreased response rates and decreased quality of responses. It has further stated that it plans to use a third-party vendor to help it collect the required data by the September 30 deadline. Currently, the EEO-1 online portal used for submitting the forms is only accepting Component-1 data, and no information has been released about when the portal will be equipped to receive Component-2 data. Additional EEOC guidance concerning Component-2 data collection for affected employers is forthcoming. At the minimum, Judge Chutkan's order requires the EEOC to issue a statement on its website by April 29, 2019, informing employers of the new deadline.

Employers have expressed concerns with the process of compiling the required data, which is expected to be time-intensive and costly, and the government may still choose to appeal the court's decision and may seek a stay during that appeal.

This ruling **does not** affect collection of traditional Form EEO-1 Component-1 data, which is still due to the EEOC by May 31, 2019.

We will be providing further updates on this development as more information becomes available. Employers with questions about how Component-2 reporting requirements might affect them should contact the authors listed above or any member of Thompson Coburn's Labor & Employment practice.

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