

LEGAL UPDATES

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# EEO-1 Pay Data for FY 2017 and 2018 Due September 30

On March 4, 2019, the U.S. District Court for the District of Columbia lifted the stay on the collection of pay data on the EEO-1 Form. Accordingly, the EEOC published a notice on its website regarding deadlines for EEO-1 pay data collection. The current deadlines for EEO-1 filers are as follows:

Component 1 pay data reports for calendar year 2018 must be filed by **May 31, 2019**

Component 2 pay data reports for calendar years 2017 and 2018 must be filed by **September 30, 2019**.

While the Department of Justice filed an appeal of the Court's order on **May 3, 2019**, which may impact these dates, EEO-1 filers must still comply with the current deadlines.

### Pay data collection requirements

**Component 1** data for the EEO-1 survey requires EEO-1 filers to report the number of employees who work for the business by job category, race, ethnicity and sex. EEO-1 filers can access the EEO-1 online survey portal [here](#).

**Component 2** data for the EEO-1 survey requires EEO-1 filers to report wage information from Box 1 of the W-2 and total hours worked for all employees by race, ethnicity and sex within 12 proposed pay bands for the 10 EEO-1 job categories. Based on information currently available, reported hours worked should show actual hours worked for non-exempt employees and an estimated 20 hours per week for part-time exempt employees and 40 hours per week for full-time exempt employees. The EEOC expects the EEO-1 online survey portal for Component 2 pay data to be open in mid-July, 2019.

## **Timeline of legal developments regarding reinstatement of pay data collection**

In September 2016, the Office of Management and Budget (OMB) approved revisions to the EEO-1 report requiring EEO-1 filers to provide additional wage information for all employees based on race, ethnicity and sex within 12 proposed pay bands.

On August 29, 2017, the OMB announced that it would immediately pause the pay data collection requirement of the revised EEO-1 form.

On March 4, 2019, in the case *National Women's Law Center, et al. v. Office of Management and Budget, et al.*, federal judge, Tanya Chutkan of the U.S. District Court for the District of Columbia vacated the August 29, 2017 stay issued by OMB of the EEOC's revised EEO-1 form and ordered the OMB's September 2016 approval of the revised EEO-1 form to be in effect. It further ordered the EEOC to collect two years of pay data.

On April 25 2019, in an oral decision, the Court admonished the government for not having "clean hands" on issues relating to compliance with the Court's previous order and ordered the EEOC to collect two years of Component 2 pay data. It also required the EEOC to publish a statement on their website and in the Federal Register, announcing to EEO-1 filers the immediate reinstatement of revised EEO-1 pay data collection for Component 2 data to be submitted by September 30, 2019. The Judge ordered the EEOC to provide regular reports to the Court and Plaintiffs, beginning on May 3 and continuing every 21 days, of all steps taken to implement the EEO-1 Component 2 data collections and to inform the Court whether the EEOC is "on track to complete the data collection by September 30, 2019."

On April 29, 2019, the EEOC published a notice on its website announcing the immediate reinstatement of revised EEO-1 pay data collection for component 2 data for calendar year 2018. The notice was also published on May 1, 2019 in the Federal Register.

On May 3, 2019, in compliance with the April 25, 2019 Court order, the EEOC published a second notice in the Federal Register announcing that EEO-1 filers must also submit Component 2 data for the calendar year 2017, in addition to Component 2 data for calendar year 2018 previously announced in the Federal Register on May 1.

On May 3, 2019, the government filed a notice of appeal to the U.S. Court of Appeals for the District of Columbia Circuit from the District Court decision.

## **What this means to you**

EEO-1 filers are required to file Component 1 pay data for calendar year 2018 by May 31, 2019. In addition, EEO-1 filers should also plan to comply with the September 30, 2019 deadline to file

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Component 2 pay data. The Husch Blackwell Labor and Employment practice will continue to monitor the appeal filed by the government contesting the District Court's order, as well as the EEOC's reports submitted to the District Court and provide you with updates on your obligations regarding pay data collection for Component 2 data.

### **Contact us**

If you have questions on your obligations or need additional advice on the impact of the legal developments regarding EEO-1 pay data collection, contact Sonni Nolan or your Husch Blackwell attorney.

*Tracey Oakes O'Brien was a contributing author of this content.*