



April 29, 2019

## Employers Must Provide EEO-1 Pay Data to EEOC by September 30, 2019

On April 25, 2019, a federal judge in Washington, D.C. set a deadline of September 30, 2019 for the U.S. Equal Employment Opportunity Commission (“EEOC”) to complete collection of the 2018 EEO-1 pay data form. *See Nat’l Women’s Law Center v. Office of Mgmt. & Budget*, Civil Action No. 17-cv-2458 (TSC) (D.D.C. Apr. 25, 2019).

Employers with 100 or more employees, and federal contractors with 50 or more employees, are required to file Form EEO-1 with the EEOC. The EEO-1 form consists of two components: a demographic survey (“Component 1”) and employee pay data (“Component 2”). The goal of collecting the Component 2 data is to reduce pay gaps based on sex, race, ethnicity and gender.

Collection of the Component 2 data has been contentious since the Obama administration added the requirement. Under the Trump administration, the Office of Management and Budget (“OMB”) stayed collection of the Component 2 data on the basis that it was too burdensome on employers. After the U.S. District Court for the District of Columbia vacated the stay, the EEOC sought to extend the Component 2 reporting deadline because it lacks the processes to collect the data, resulting in risks to the quality of data received and decreased response rates. The EEOC indicated it would need to use a private data and analytics contractor to meet the September deadline at a cost of at least \$3 million.

Under the court’s ruling, the Component 1 demographic data (workforce demographics by job category, race, ethnicity and gender) still must be filed with the EEOC by May 31, 2019. However, the Component 2 data (annual W-2 compensation sorted by pay band and annual hours worked) now must be reported to the EEOC by September 30, 2019.

In addition, the Court ordered the EEOC to collect a second year of pay data, giving the EEOC two options: (1) collect past data from 2017 by September 30, 2019, or (2) collect 2019 compensation data in the normal 2020 EEO-1 reporting period, or by March 31, 2020. The EEOC has until May 3, 2019 to advise the court which option it has selected. The court further extended approval of the revised EEO-1 form through April 2021, and the court ordered the EEOC to implement steps to collect the data, notify employers of the requirements, and regularly report to the court on its efforts to comply with the ruling.

If you have questions about how this ruling affects your organization, including applicable reporting requirements, please contact your Kutak Rock attorney or a member of our National Labor and Employment Practice. You may also visit us at [www.KutakRock.com](http://www.KutakRock.com).

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