

Management Alert



BREAKING NEWS: District Court Orders Employers to File EEO-1 Component 2 Data by September 30, 2019

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Seyfarth Synopsis: Today, the District Court for the District of Columbia issued its ruling regarding the timeframe for collecting pay and hours data in connection with the Revised EEO-1 Report. Ruling from the bench, the Court ordered that the EEOC begin collecting 2017 and 2018 Component 2 data by September 30, 2019. The Court gave the EEOC the option of collecting 2019 Component 2 data in the 2020 reporting period in lieu of collecting 2017 data by September 30, 2019 provided that it notifies the Court and the Plaintiffs of its intention to do so by May 3, 2019.

As we previously [reported](#), on March 4, 2019, the U.S. District for the District of Columbia issued an opinion reinstating the EEOC's collection of pay data as part of the EEO-1 Report filing. The Revised EEO-1 form requires employers with 100 or more employees to report W-2 wage information and total hours worked for all employees by race, ethnicity and sex within 12 EEOC created pay bands.

The pay data collection requirement was originally slated to go into effect on March 31, 2018, but stalled after the Office of Management and Budget ("OMB") stayed the implementation of the pay data collection portions of the revised EEO-1 Report. That decision prompted a lawsuit by the National Women's Law Center and the Labor Counsel for Latin American Advancement against the OMB and the EEOC.

After its March 4, 2019 ruling, the Court requested briefing and held an evidentiary hearing regarding the timeline for collecting Component 2 data (*i.e.*, hours and pay data). After holding a hearing on April 16 to hear direct testimony from the EEOC regarding its capabilities and challenges with the collection of the Revised EEO-1 Report, the District Court ordered the EEOC to collect -- and to take all steps necessary to collect -- EEO-1 Component 2 data for 2017 and 2018 by September 30, 2019. In lieu of collecting Component 2 data for 2017, the Court held that the EEOC may collect Component 2 data for 2019 and submit in 2020. If the Agency opts to collect the 2019 data during the 2020 reporting period, it must notify the Court and Plaintiffs by May 3, 2019 and also provide prompt notice to employers.

The EEOC was further ordered to issue a statement both on its website and in the Federal Register no later than April 29, 2019 notifying employers that employers must submit Component 2 data for 2018 by September 30, 2019. The ruling also required the EEOC to provide the Plaintiffs and the Court updates regarding the steps it has taken to comply with the decision and the steps that it anticipates taking in the future -- including whether it is on track to meet the September 30 deadline -- beginning on May 3 and continuing every 21 days thereafter. The Court stipulated that it will not consider the collection of Component 2 data to be complete until the number of reporters equals or exceeds the mean response rate of EEO-1 reporters for the last four reporting years for EEO-1 data. Finally, the Court ordered that, pursuant to the express language and purpose of the Paperwork Reduction Act, as well as the Court's position that the Government had conceded

the issue of tolling because it had failed to rebut or argue against tolling previously, the three year authorization period be tolled for the period of the unlawful OMB stay (553 days), to April 5, 2021, which the Court stated allowed sufficient time to ensure that collection will occur. The Court also ruled that it would retain jurisdiction to enforce its March 4, 2019 order, as well as the orders issued today.

Unfortunately, the Court's oral ruling did not appear to take into consideration the burdens that employers face in complying with this deadline. In setting its deadline, the Court appears to have disregarded the perspective provided by the US Chamber of Commerce and 11 other leading national industry, employer and human resources associations on behalf of the employer community through its *amicus* submissions on [April 3](#) and on [April 22](#). In those submissions, employers noted that the testimony provided by EEOC's Chief Data Officer, Samuel C. Haffer, on April 16 raised new and heightened concerns regarding the timeline contemplated by the Court for employers to compile and submit Component 2 data (including the lack of available and necessary resources for employers to compile Component 2 data). Specifically, Dr. Haffer's testimony made clear that:

1. the EEOC's proposed timeline fails to consider the impact on the employer community;
2. the EEOC's collection of sensitive and confidential information will not follow industry standards;
3. the employer community has not been provided with key information needed to come into compliance with the collection and production of highly sensitive and confidential component 2 data (instead the EEOC has testified it will do so in the future "on the fly");
4. there is no timetable by which employers will be provided with the resources and answers needed to comply with the collection and production of highly sensitive and confidential component 2 data; and
5. the EEOC confirmed that the highly sensitive and confidential data that is being demanded from employers has no utility and that the EEOC is not prepared to collect or analyze the data.

What Does This Mean For Employers?

There has been no indication as to whether the Department of Justice, which represents the EEOC's interests in this litigation, will appeal today's ruling. We note that the EEOC will be posting information on April 29 regarding employers' obligation to submit Component 2 data for 2018 by September 30, 2019. The next date for employers to circle on their calendars is the May 3 deadline for the EEOC to inform the Plaintiffs, the Court and employers whether it will collect the 2017 or the 2019 Component 2 data. Employers should begin making preparations to collect, aggregate and report on pay and hours data for 2018 now. Whether your organization prepares reports internally or sends data to a vendor for processing, this is the time to understand the different databases and their functionality with respect to the required data in Component 2 for each of your reporting locations. It is also important to identify critical resources to work on your existing datasets to aggregate, compile, test, and submit Component 2 for 2018 by September 30, 2019.

Employers should also keep in mind that today's ruling does not impact the May 31 deadline for submitting the Component 1 demographic to the EEOC. Employers should already be taking steps to report that information.

Seyfarth Shaw will be hosting a webinar on Monday April 29 from 12:00 - 1:00 PM Central to discuss how to prepare for the EEO-1 Component 2 requirements.

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