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Breaking News: D.C. Court Reinstates Collection of Pay Data on EEO-1 Report

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Seyfarth Synopsis: *The U.S. District Court for the District of Columbia vacates the Office of Management and Budget's ("OMB") prior order staying the implementation of the revised EEO-1 Report which required employers to report W-2 wage information and total hours worked.*

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 was an Obama-era change that would have required 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 proposed 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.

In its decision, the Court concluded that OMB's action staying the EEOC's pay data collection tool was an "illegal" arbitrary and capricious decision that lacked a "reasoned explanation." As a result, the Court vacated the stay and ordered that the previously approved revised EEO-1 Report that required the collection of pay data form shall be in effect. We anticipate that the Court's decision will be appealed.

Seyfarth Shaw offered [testimony](#) on behalf of the U.S. Chamber of Commerce and submitted comments on the revised EEO-1 Report outlining the employer community's significant concerns with the burden, benefit, and confidentiality of the proposed changes. In early 2017, the U.S. Chamber of Commerce submitted a request for a review of the initial burden estimate along with a supporting declaration and testimony regarding the burden estimates which helped prompt OMB's decision to suspend the implementation of the pay data collection requirement.

Impact to Employers

The Court's decision has significant implications for employers. As we have [previously reported](#), the current EEO-1 Report filing deadline is on May 31st. That filing did not envision the collection of pay data.

We anticipate that the EEOC will issue a statement to employers regarding the stay with further direction regarding the implementation date of the pay data collection component of the EEO-1 Report in the very near future. It is highly unlikely that employers would be required to provide the required pay data during the May 31st reporting cycle.

We will continue to monitor the situation and will provide updates as they become available.

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