

CLIENT ALERT

Court Orders Employers to Submit EEO-1 Hours and Pay Data by September 30, 2019

APRIL 29, 2019

A federal judge has ordered the EEOC to collect EEO-1 hours and pay data for calendar year 2018 from employers by September 30, 2019. If the Court's ruling stays in place, this will represent a significant burden for countless employers throughout the country. Specifically, covered employers will be required to provide, by September 30, 2019, the number of their employees, separated by job category, sex, race, and ethnicity, that fall within 12 pay bands, as well as the total number of hours worked by the employees in each pay band.

Background

Since 1966, the EEOC has required private employers with 100 or more employees to file annual reports, known as "Employer Information Report EEO-1" or "EEO-1" reports, that report the number of individuals employed by job category, sex, race, and ethnicity. Certain federal contractors and subcontractors with more than 50 employees are also subject to this requirement.

In 2016, in an ostensible effort to strengthen enforcement of equal pay laws, the EEOC formally announced its intention to expand the EEO-1 reporting requirements to include data regarding employees' W-2 earnings and hours worked in 12 pay bands for the 10 EEO-1 job categories. See our October 2016 [briefing](#). Pursuant to the Paperwork Reduction Act of 1995, this new data collection requirement was subject to approval of the Office of Management and Budget (OMB). OMB initially granted its approval in September 2016.

In August 2017, however, following the change in presidential administration, OMB reversed course and ordered the EEOC to stay enforcement of the new data collection requirements. Litigation predictably ensued. See *National Women's Law Center et al. v. Office of Management and Budget, et al.*, Case No. 1:17-cv-02458 (D.D.C.) (filed November 15, 2017).

On March 4, 2019, Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia issued an order reinstating the new data collection requirement, finding OMB's decision to stay the requirement "arbitrary and capricious" in that it "totally lacked [a] reasoned explanation." The Court did not at that time provide guidance regarding implementation of its order.

The Court’s Ruling

On April 25, following a period in which it heard evidence and argument regarding the timing and logistics of reinstating the data collection requirement, the Court issued a further order, directing the EEOC to collect 2018 hours and pay data by September 30, 2019. The Court also directed the EEOC to collect an additional year of hours pay data from employers, but gave the EEOC the option of collecting these data for either calendar year 2017 or 2019. If the EEOC decides to collect 2017 hours and pay data, employers will be required to submit those data by September 30 as well. If, as is more likely, the EEOC elects to comply with the order by collecting 2019 hours and pay data, employers will have until the spring of 2020 to submit those data. The Court ordered the EEOC to announce which second-year dataset it will collect from employers by May 3.

What This Means for Employers

It is not yet known whether the government will appeal the Court’s ruling, or otherwise attempt to act to delay or to forestall the Court’s order. For now, covered employers should operate on the assumption that the September 30 deadline for submission of 2018 data will hold and begin making necessary preparations. After May 3, covered employers should also know whether they will need to collect and submit 2017 data by September 30.

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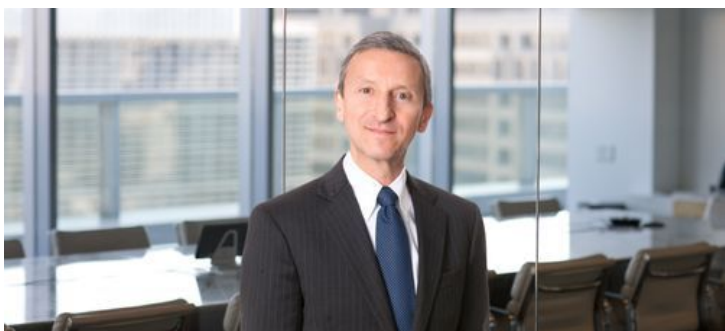
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