

EEO-1 Employers Must Submit Pay Data to the EEOC in 2019

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On April 3, 2019, the US Equal Employment Opportunity Commission (EEOC) submitted a proposed plan to delay the collection of employee pay data from May 31, 2019, to September 30, 2019. The EEOC's proposal was filed in response to Judge Tanya Chutkan's March 4, 2019, ruling overturning the stay on the Obama administration's proposed addition of employee pay data to the Employer Information Report (EEO-1). *National Women's Law Center v. Office of Management and Budget*, No. 17-cv-2458 (D.C. Cir. Mar. 4, 2019). The agency informed the court that it would not be able to meet the original deadline without posing an unreasonable security risk to employer data and proposed the use of private contractors to complete the collection process by the end of September. Employers have since expressed concerns about the EEOC's plan and the risk that sensitive data could be exposed to the public. The court is expected to hear argument on the agency's proposal this week and make a final decision in the coming weeks. If the plan is approved by the court, covered employers could be required to compile and submit data on employee hours and W-2 earnings as early as this fall.

EEO-1 reporting and Component 2 proposal

Employers with 100 or more employees, and federal contractors with 50 or more employees, are required to submit EEO-1 information to the EEOC on an annual basis. The EEO-1 form collects statistical information on an employer's workforce, including the number and location of employees as well as employee demographic data (ethnicity, race, sex). In 2016, the Obama administration proposed revisions to the EEO-1 form to include additional data on employee pay and hours. Under this pay data collection, called "Component 2" of the EEO-1 form, employers would be required to report the total number of full-time and part-time employees by demographic categories in each of 12 pay bands listed for each EEO-1 job category based on W-2 earnings. Employers also would be required to report the number of hours worked in the last year by all the employees accounted for in each of the 12 pay bands.

Stay of Component 2 pay data collection

Less than a year before Component 2 went into effect, the Trump administration's Office of Management and Budget reversed the decision to revise the EEO-1 form and announced an immediate stay of the EEO-1 pay data collection. In the aftermath of this announcement, the National Women's Law Center and other pay equity organizations across the country filed suit alleging that the government's decision to indefinitely stay the EEOC's collection of pay data violated the Paperwork Reduction Act of 1995. *National Women's Law Center v. Office of Management and Budget*, No. 17-cv-2458 (D.C. Cir. Mar. 4, 2019).

Judge Chutkan's March 4, 2019 order in this case granted plaintiffs' motion for summary judgment, effectively vacating the stay of the revised EEO-1 form and reinstating the collection of Component 2 pay data. The court ruled that the government's decision to stay the collection of information was "arbitrary and capricious" and "totally lacked the reasoned explanation that the [Administrative Procedure Act] requires." Though Judge Chutkan has not yet approved the EEOC's proposed rollout of pay data reporting under Component 2, the September 2019 deadline mentioned by the government in a recent briefing could require covered employers to comply with new reporting requirements by the end of the year.

Next steps for employers

For now, employers are not required to alter or supplement their EEO-1 reports. The EEOC's plan has not yet been approved, and the Component 2 pay data requirements may soon be revised by the agency in light of legal challenges. However, we recommend that covered employers stay tuned to forthcoming developments on this issue and begin to consider ways to efficiently collect the employee pay and hours data described above. Additionally, EEO-1 employers must remember that Component 1 reporting requirements on workforce numbers, location and demographic data are still in effect. Employer EEO-1 reports for 2018 must be submitted by the agency's May 31, 2019, deadline.

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Key Contacts

Frederick Baron Palo Alto	fbaron@cooley.com +1 650 843 5020
Ann Bevitt London	abevitt@cooley.com +44 (0) 20 7556 4264
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Helenanne Connolly Reston	hconnolly@cooley.com +1 703 456 8685
Virat Gupta Washington, DC	vgupta@cooley.com +1 202 962 8362
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084

Gerard O'Shea New York	goshea@cooley.com +1 212 479 6704
Michael Sheetz Boston	msheetz@cooley.com +1 617 937 2330
Lois Voelz Palo Alto	lvoelz@cooley.com +1 650 843 5058
Summer Wynn San Diego	swynn@cooley.com +1 858 550 6030

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