

LABOR AND EMPLOYMENT

ALERT

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## Employers Must Submit 2017 and 2018 Pay Data to EEOC by September 30

By Jo Bennett

The Equal Employment Opportunity Commission has reinstated its collection of pay data from private-sector employers with 100 or more employees as a result of a court order issued on April 25, 2019. Employers must report 2017 and 2018 W-2 wages by September 30, 2019, though the portal for filing likely may be open well past the deadline.

The EEOC reinstated the data collection because a federal court in the District of Columbia concluded, in an earlier March decision, that the Trump Administration's 2017 decision to "stay" the data collection was improper. Since her ruling in March, Judge Tanya S. Chutkan has been holding hearings to ensure compliance with the court's order and to establish a timeline for the data collection. On April 25, 2019, Judge Chutkan ordered the EEOC to collect the 2018 pay data by September 30 and gave the agency an option to collect 2017 data by the same date or collect 2019 pay data during the 2020 EEO-1 reporting cycle. EEOC announced May 2 that it would collect 2017 and 2018 pay data by September 30, 2019.

Under the Obama Administration, the EEOC initially notified employers in September 2016 that companies would need to submit pay data by sex and by race/ethnicity using 12 pay bands in each of the 10 existing EEO-1 job classifications. The EEOC also said that it would require employers to report hours worked as part of the new "Component 2" EEO-1 report. The first report requiring Component 2 data was originally due to be filed by March 31, 2018, incorporating pay and hours-worked data for the 2017 calendar year.

Before finalizing the data collection decision in 2016, the EEOC sought, and obtained, approval from the Office of Management and Budget ("OMB"), which must approve a federal agency's data collection practices. In August 2017, however, OMB reversed course and stayed the EEOC's collection of the pay data. Two groups, the National Women's Law Center and the Labor Council for Latin American Advancement, filed suit against OMB and the EEOC in November 2017 seeking reinstatement of the 2016 EEOC decision to collect Component 2 data. The federal court sided with the plaintiffs in a decision issued in March 2019, concluding that the Trump Administration had not followed the proper procedures to rescind the earlier decision on data collection.

During the April 25, 2019 hearing, the judge heard from at least one employer association that a majority of its members did not think they could comply by the September 30 deadline. In response to these concerns, the court ordered that the EEOC keep the filing portal open "until the percentage of EEO-1 reporters that have submitted their required EEO-1 Component 2 reports equals or exceeds the mean percentage of EEO-1 reporters that actually submitted EEO-1 reports in each of the past four reporting years."

**The court decision forces employers to spend time and money immediately to meet the September 30 filing deadline.** Employers should check the EEOC's website regularly for filing information updates and contact their payroll service providers to assist with the technical aspects of reporting the data. The EEOC stated in a May 1, 2019 filing in the Federal Register

that it expected to have the capability to accept Component 2 data beginning in mid-July. The deadline for submitting Component 1 data – sex and race/ethnicity identifiers by the 10 EEO-1 classifications – is May 31, 2019. ◆

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#### INFORMATIONAL LINKS

2018 EEO-1 Survey (with note on Component 2 data) – <https://www.eeoc.gov/employers/eeo1survey/index.cfm>

Reinstatement of Revised EEO-1: Pay Data Collection (Federal Register filing) – <https://www.federalregister.gov/documents/2019/05/01/2019-09002/reinstatement-of-revised-eeo-1-pay-data-collection>

National Women's Law Center, et al., v. Office of Management and Budget, et al., Civil Action No. 17-cv-2458 (D.D.C.) [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2017cv2458-45](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2017cv2458-45)

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