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Trump Administration Appeals District Court Order on Pay Data

By Jo Bennett

The Trump Administration has appealed a District Court decision ordering the Equal Employment Opportunity Commission to collect pay data from employers by September 30, 2019. In announcing the appeal on its website, the EEOC advised employers that the appeal did not affect the September due date.

The Department of Justice filed the notice of appeal on May 3, 2019. A day earlier, the EEOC had announced that it would collect 2017 and 2018 pay data beginning in mid-July and that employers had until September 30 to submit the pay data.

The EEOC reinstated the data collection after a federal court in the District of Columbia concluded that the Trump Administration’s 2017 decision to “stay” the data collection was improper. Since issuing the initial decision on March 4, 2019, U.S. District 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.

On May 3, the same day the Department of Justice filed the notice of appeal, the EEOC reported to Judge Chutkan that the appeal had no effect on the September 30 data collection deadline and that the agency had entered into a contract with NORC at the University of Chicago to assist the EEOC in collecting the pay data.

Under the Obama Administration, the EEOC initially notified employers in September 2016 that companies would need to submit W-2 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.

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 deadline for submitting Component 1 data – sex and race/ethnicity identifiers by the 10 EEO-1 classi-

cations – is May 31, 2019. Private employers with 100 or more employees and federal contractors with 50 or more employees must file Component 1 data. The pay data collection rule (Component 2) applies only to private employers with 100 or more employees and requires employers to submit W-2 wage information.◆

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