

EEO-1 PAY DATA COLLECTION REQUIREMENTS SPRING BACK TO LIFE

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► The who, what, where and when of the EEO-1 survey.

Based on an April 25, 2019 ruling by a U.S. District Court judge, covered employers will be required to submit employee wage or salary information on annually-filed EEO-1 reports, commencing as early as September 30, 2019. The EEO-1 filing obligation applies to all employers employing 100 or more persons; if an employer has a federal contract or subcontract requiring an affirmative action plan, the employee coverage threshold is reduced to 50 persons.

Since 1966, the Equal Employment Opportunity Commission (EEOC) has required covered employers, on September 30 of each year, to report

on EEO-1 forms the number of individuals they employ in 10 different job categories, broken down by gender, race and ethnicity. The EEOC annually makes publicly available aggregate EEO-1 information for major geographic areas and industry groups.

On February 1, 2016, the EEOC announced its intention to amend the EEO-1 form to include a new data component by which aggregate

W-2 earnings in 12 pay bands for the 10 EEO-1 job categories would be collected. This collection requirement purportedly was related to the EEOC's equal pay law enforcement activities. The federal Office of Management and Budget (OMB) initially approved the EEOC's proposed data collection amendment, but subsequently stayed its implementation on August 29, 2017.

On November 15, 2017, the National Women's Law Center (NWLC), among other named plaintiffs, filed a complaint in the D.C. District Court against OMB, asking the court to compel the EEOC's collection of two years of pay data pursuant to the suspended regulation. On March 4, 2019, Judge Tanya Chutkan, ruling in favor of the

plaintiffs, lifted OMB's implementation stay.

In her April 26, 2019 Order, Judge Chutkan gave the EEOC two options: (1) require covered employers to submit pay data for calendar years 2017 and 2018 on the EEO-1 forms that they file by the September 30, 2019 deadline; or (2) require covered employers to submit pay data solely for calendar year 2018 by the September 30, 2019 deadline and, in



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lieu of the calendar year 2017 pay data, submit such data for calendar year 2019 during the 2020 EEO-1 reporting period. The Order required the EEOC to notify the court of its option decision by May 3, 2019. On May 3, the EEOC filed a notice of

appeal with the U.S. Court of Appeals for the District of Columbia Circuit from Judge Chatkan's decision.

The EEOC stated on May 6, 2019 that its appeal does not alter the requirement to submit 2017 and 2018 pay data by September 30, 2019.

Because pay data for 2017 and 2018 may need to be submitted on EEO-1 forms by as early as September 30, 2019, unless the district court's ruling is stayed by the appeals court pending its review of Judge Chatkan's decision, we recommend

that employers start preparing to submit such data now. ■

The views and opinions expressed in this article are those of the authors and do not necessarily reflect those of Sills Cummis & Gross.