Employers Must Submit EEO-1 Pay Data by Sept. 30

Regular EEO-1 data still must be filed by May 31

By Lisa Nagele-Piazza, J.D., SHRM-SCP

A federal judge ordered the Equal Employment Opportunity Commission (EEOC) to collect employee pay data—sorted by race, ethnicity and sex—by Sept. 30.

National Women's Law Center (NWLC) and other plaintiffs wanted the EEOC to collect two years of data, just as the agency was supposed to under a new regulation before the government halted the collection in 2017.

Judge Tanya Chutkan of the U.S. District Court for the District of Columbia sided with the plaintiffs, and chastised the government for not taking any meaningful steps during the stay or litigation to prepare for collection. She gave the EEOC the option of submitting 2017 pay data along with the 2018 information by the Sept. 30 deadline or submitting 2019 pay data during the 2020 reporting period. The EEOC has until May 3 to notify the court of its choice.

Either way, employers should plan to submit 2018 pay data by Sept. 30.

What's Next?

"There's always the possibility of an appeal or a stay pending an appeal," noted Jim Paretti, an attorney with Littler in Washington, D.C. But that will depend on how the parties decide to move forward.

The agency said it could make the collection portal available to employers by July 15 and would provide information and training to employers prior to that date, according to [documents](#) filed with the court.

Employers should keep in mind that they still must submit their 2018 data for Component 1 of the EEO-1 form by May 31. Component 1 asks for the number of employees who work for the business by job category, race, ethnicity and sex. Component 2 data—which

includes hours worked and pay information from employees' W-2 [forms](#) by race, ethnicity and sex—is the subject of the legal dispute.

Businesses with at least 100 employees and federal contractors with at least 50 employees and a contract with the federal government of $50,000 or more must [file](#) the EEO-1 form. The EEOC uses information about the number of women and minorities companies employ to support civil rights enforcement and analyze employment patterns, according to the agency.

Employer Burden

During the recent hearings, very little attention was given to the collection and reporting burden on employers, Paretti said.

The revised EEO-1 form will require employers to report wage information from Box 1 of the W-2 form and total hours worked for all employees by race, ethnicity and sex within 12 proposed pay bands.

The reported hours worked should show actual hours worked by nonexempt employees and an estimated 20 hours per week for part-time exempt employees and 40 hours per week for full-time exempt employees.

"Filling out the added data in the EEO-1 form will present a large amount of work, especially as there's great potential for human [error](#) when populating the significantly expanded form," said Arthur Tacchino, J.D., chief innovation officer at SyncStream Solutions, which provides workplace compliance solutions.

Although employers might need to report 2017 pay data, they shouldn't focus on that data right now, said Camille Olson, an attorney with Seyfarth Shaw in Chicago. Employers may not know until May 3 if 2017 data will ever be collected or if the EEOC will instead opt to collect 2019 data during the 2020 reporting period.

But employers should [start](#) looking at their 2018 data now and conduct an initial assessment of their systems, Olson said. Identify the systems that house the relevant demographic, pay and hours-worked data and determine how to pull the information together, she said.

Pulling EEO-1 data is much simpler for Component 1, she noted, because it only involves reporting the employer's headcount by race ethnicity and sex—whereas collecting pay information involves more data points. Additionally, employers may use different vendor

systems at different locations, some employees may have only worked for part of the year, and other employees may have been reclassified to exempt or nonexempt.

"Employers may want to inquire with their current vendors—payroll or otherwise—or look for outside vendors that may be able to assist them with this reporting requirement," Tacchino said.

Under some circumstances, employers may be able to seek an exemption (at the EEOC's discretion) if filing the information would cause an undue burden. "Mega employers" may not be able to show an undue burden, but this could be an option for smaller businesses, Paretti noted.

The Court Battle

The EEO-1 form was revised during President Barack Obama's administration to add the Component 2 data, but the pay-data provisions were suspended in 2017 by President Donald Trump's administration. The NWLC challenged the Trump administration's hold on the pay-data collection provisions, and on March 4, Chutkan lifted the stay—meaning the federal government needed to start collecting the information.

On March 18, however, the EEOC opened the portal for employers to submit EEO-1 reports without including the pay-data questions. Chutkan subsequently told the government to come up with a plan.

The EEOC proposed the Sept. 30 deadline for employers to submit Component 2 data, claiming that the agency needed more time to address the associated collection challenges. Furthermore, the EEOC's chief data officer warned that rushing the data collection may yield poor quality data. Even with the additional time, the agency said it would need to spend more than $3 million to hire a contractor to provide the appropriate procedures and systems.

Robin Thurston, an attorney with Democracy Forward and counsel for the plaintiffs, said at an April 16 hearing that the plaintiffs don't want the agency to compromise quality. But they also wanted "sufficient assurances" that the EEOC will collect the data by Sept. 30.

On April 25, Chutkan ordered the government to provide the court and the plaintiffs with periodic updates on the EEOC's progress and to continue collection efforts until a certain threshold of employer responses has been received.