

## D.C. Court Sets Deadline to Submit EEO-1 Employee Pay Data

### IN SHORT

**The Situation:** The United States District Court for the District of Columbia has set September 30, 2019, as the deadline for certain employers to submit EEO-1 Component 2 pay data for 2017 and 2018. Between now and then, the Equal Employment Opportunity Commission ("EEOC") will be providing periodic updates to the court with additional information regarding the requirement.

**The Result:** The court's ruling has been appealed, but the EEOC has stated that the appeal will have no effect on the requirement that EEO-1 filers submit the requisite compensation data by the September 30 deadline.

**Looking Ahead:** Notably, Component 1 data is due on May 31, 2019. Because the Component 2 data is a derivative of the Component 1 filing, it is important to ensure the accuracy of the Component 1 report.

On April 25, 2019, the United States District Court for the District of Columbia set a September 30, 2019, deadline for employers to submit pay data on the revised EEO-1 form. In doing so, the court recognized that much needs to be ironed out between now and then and, thus, required the EEOC to submit periodic progress reports. The ruling comes on the heels of the court's March 4, 2019, summary judgment order in which it reinstated the revised EEO-1 form requiring that certain employers report summary employee pay data. See *Nat'l Women's Law Center v. Office of Mgmt. and Budget*, No. 17-cv-02458 (D.D.C. Mar. 4, 2019).

The form EEO-1 requires employers with 100 or more employees to report sex, race, and ethnicity information across various job categories. In 2016, the EEOC announced it would begin collecting employees' W-2 earnings and hours worked—so-called "Component 2" data—as part of a broader effort to investigate pay discrimination. In September 2016, the Office of Management and Budget ("OMB") approved the EEOC's proposed collection.

In August 2017, however, the OMB reversed course and stayed the EEOC's collection efforts. The OMB explained that relevant circumstances had changed based on the EEOC's release of data-file specifications for employers' use in submitting EEO-1 data. Because these specifications were not included in the Federal Register, the OMB found the public had been deprived of its ability to comment. OMB further asserted that because the EEOC's burden estimates did not account for compliance with these specifications, these estimates "may have changed."

In November 2017, the National Women's Law Center and the Labor Counsel for Latin American Advancement sued OMB, arguing, among other things, that the agency's stay violated the Administrative Procedure Act. The court agreed, and on March 4, 2019, granted the plaintiffs' motion for summary judgment and vacated the OMB's stay, reasoning that the OMB's action lacked the "reasoned explanation" the law demands.

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Under the terms of the court's April 25, 2019, order, the EEOC must collect EEO-1 Component 2 data for calendar years 2017 and 2018. The court also ordered the EEOC to issue a statement on its website and submit the same for publication in the Federal Register notifying EEO-1 filers that they should prepare to submit Component 2 data no later than September 30, 2019. Moreover, beginning Friday, May 3, 2019, and continuing every 21 days thereafter, the court required the EEOC to provide progress reports to the plaintiffs and the court listing all steps it has taken to implement the EEO-1 Component 2 data collections since the prior progress report, all steps to be taken during the ensuing three-week period, and indicating whether EEOC is on track to complete the collection(s) by September 30, 2019.

On May 3, 2019, the EEOC stated in its report that it has selected a third party vendor, NORC at the University of Chicago, to develop the reporting tool and detailed how it will work with NORC in the coming weeks. Specifically, the agency stated, "[i]n the next three weeks, the EEOC plans to oversee preparation and planning for the launch of the NORC email and phone helpdesk to assist filers with questions and concerns about the collection of Component 2 data for 2017 By April 29, 2019. The EEOC anticipates that the helpdesk will launch sometime in the next three weeks."

Also on May 3, the U.S. Department of Justice filed a Notice of Appeal of the court's summary judgment ruling; however, the EEOC reported to the court, and posted a statement on its website, that the appeal "has no effect on the requirement that [EEO-1 filers] submit 2017 and 2018 EEO-1 Component 2 data by September 30, 2019."

## SIX KEY TAKEAWAYS

1. Employers must submit EEO-1 Component 2 data for 2017 and 2018 to the EEOC by September 30, 2019.
2. The EEOC has contracted with NORC at the University of Chicago to develop the data collection tool that employers will use to submit this data.
3. The EEOC will provide updates on its progress every 21 days, beginning on May 3, 2019.
4. Employers should consider conducting a pay equity audit of their workforces for both 2017 and 2018 and should consult their counsel for advice on conducting such an audit.
5. The EEOC expects to begin collecting the pay data in mid-July and will notify filers of the precise date the survey is open as soon as it is available.
6. The Component 1 data filing (the usual EEO-1 form) is due May 31, 2019, with an automatic two-week extension to June 14, 2019, upon request. Because the Component 2 filing is derivative of the Component 1 filing, the importance of accuracy with respect to the Component 1 filing is heightened.



**Brian M. Jorgensen**  
Dallas



**Alison B. Marshall**  
Washington



**Terri L. Chase**  
New York



**Elizabeth B. McRee**  
Chicago

[All Contacts >>>](#)



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