Judge Sets Deadline for EEOC Collection of Burdensome Pay Data

By John Vering and Curry Sexton

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Historically, the Equal Employment Opportunity Commission ("EEOC") has collected information from employers regarding the number of employees by job category, race, ethnicity, and sex – known as Component 1 data. Employers covered by this requirement are still required to regularly submit the Component 1 data to the EEOC. In September 2016, the Office of Management and Budget ("OMB") under the Obama Administration approved the EEOC's proposal to add the collection of pay data under Component 2 of the EEO-1 report. The Trump Administration OMB stayed/delayed the implementation of Component 2 collection in 2017.

Component 2 Data Collection Mandate and Deadline for Submission

In a recent ruling, Judge Tanya S. Chutkan (U.S. District Court for the District of Columbia) reinstated the OMB's original approval of Component 2 collection and ordered the EEOC to collect two years (2017 and 2018) of Component 2 EEO-1 pay data ("Pay Data") by September 30, 2019. This mandate applies to:

- Private employers and federal contractors and subcontractors with 100 or more employees;
- Private employers with fewer than 100 employees, if the employer is owned or affiliated with another employer, or there is centralized ownership, control, or management, so that the employers together legally constitute a single enterprise, and the entire enterprise employs a total or 100 or more employees.

The Pay Data requirement includes employees' hours worked as well as W-2 compensation information and must be broken down by race, sex, and ethnicity within 12 proposed pay bands ranging from $19,239 and under for the lowest band, to $208,000 and above for the highest band. This decision imposes an unanticipated and substantial burden on businesses and their HR, IT, and legal departments, with the deadline quickly approaching.

EEOC Resources

The EEOC anticipates a web-based portal for the collection of the 2017 and 2018 Pay Data will be active by mid-July 2019. Although the portal is not yet open, the URL for the portal will be: https://eeoccomp2.norc.org/. Prior to the launch of the portal, the EEOC will provide notification of its

launch date as well as FAQs and other materials that will assist employers with the submission of the necessary Pay Data. Additionally, the EEOC expects that a helpdesk will be fully operational beginning approximately June 17, 2019 to assist filers. The contact information for the helpdesk will be:

- Email: EEOCcompdata@norc.org
- Toll Free: (877) 324-6214

Please note that although the Department of Justice filed a Notice of Appeal from the April 25 court decision, the pending appeal does not stay/postpone the district court orders. There is no indication that the pending appeal will be decided by the reporting deadline of September 30, 2019.

Immediate Steps for Employers

There does not seem to be a penalty or fine associated with failing to comply with the requirement of submitting Component 2 data by the deadline of September 30, 2019 and there have been some informal reports that the EEOC will send reminder notices to employers who fail to meet the September 30, 2019 deadline.

Because this is the first time data of this classification has been required to be compiled, affected employers who have not already begun implementing protocols for data collection should consult with subject-matter and technical experts to determine how much effort is required to capture, analyze, and report the required information by the approaching September 30 deadline.

We strongly encourage you to consult with legal counsel regarding your Company’s obligations regarding submission of the Pay Data in light of the EEOC position that the data should be submitted by September 30, 2019 and the pending appeal of court decision requiring the EEOC to collect this data by September 30, 2019.

This article is general in nature and does not constitute legal advice. Readers with legal questions should consult the author, John Vering, Rachel Baker, John Neyens, Brenda Hamilton, Shannon Johnson, Mark Opara, or your regular contact at Seigfreid Bingham at 816-421-4460.