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EEO-1 Pay Data Reporting Update

Employers with annual EEO-1 reporting requirements can soon expect to have new pay data reporting requirements for 2018. The reporting deadline could be as early as May 31, 2019, but the deadline is more likely to be set for later this year.

Background

The Equal Employment Opportunity Commission (EEOC) requires employers with at least 100 employees and federal contractors with 50 or more employees and contracts of \$50,000 or more to file annual EEO-1 reports. The EEO-1 report collects, through its Component 1 requirements, the demographic makeup of the employers workforce by race, gender, ethnicity, and job category. In February 2016, the EEOC published a federal notice announcing its intention to revise the EEO-1 form to collect pay demographics through a Component 2 requirement. The Office of Management and Budget (OMB) approved the pay data collection in September 2016, with data collection to begin in 2017 and be reported to the EEOC in March 2018.

After President Trump was elected, the OMB shifted course. In August 2017, the OMB stayed the EEO-1 pay data requirements due to the burdens on employers and privacy implications. In November of 2017, pay equity advocates filed suit against the OMB, asking that the EEO-1 pay data collection process move forward. In this lawsuit, the U.S. District Court for the District of Columbia granted the requested relief in early March 2019, vacating the OMBs stay and reinstating the EEO-1 pay data collection requirements.

On March 18, 2019, the EEOC released its general EEO-1 form and announced that, in light of the partial government shutdown earlier this year, completed forms were not due until May 31, 2019. With respect to pay data, the EEOC announced that it was working diligently on next steps in the wake of the D.C. court order and would provide further information.

Since issuing its March 2019, order, the D.C. court has accepted submissions from the parties and friends of the court on a proposed EEO-1 pay data collection deadline. The EEOC has told the court that the earliest it will be in a logistical position to collect pay data is September 30, 2019. The EEOC explained that it is not currently capable of collecting employers 2018 pay data and, therefore, must retain a data and analytics contractor at a substantial cost to set up a data collection mechanism. The plaintiff asked the court to set a May 31, 2019 collection date, while a number of business associations filed a friend of court brief that argued that employers need 18 months to prepare to comply with the new EEO-1 requirements. The judge has ordered a hearing on the deadline issue for April 16, 2019.

Implications for Employers

Covered employers should keep in mind that they still must submit the 2018 Component 1 data of the EEO-1 report (e.g., employee data by job category, race, sex, and ethnicity) by May 31, 2019. The Component 2 pay data, which will



include data on hours worked and pay information from employees' W-2 forms by race, ethnicity, and sex, will need to be submitted by the deadline that is yet to be set by the D.C. court. While we wait for the courts deadline ruling, employers should take steps to ensure that they have collected and can produce the 2018 pay data when eventually required to do so.