



Court Reinstates Pay Data Reporting with September 30, 2019 Deadline

April 26, 2019

A significant expansion to the data many employers must report to the federal government has been given new life by a federal court. A 2016 mandate that required pay information be added to an employer's annual EEO-1 report had been put on hold. However a federal court order, announced on April 25, 2019, reinstated the requirement and declared September 30, 2019 as the deadline for providing 2018 data. The court also ordered the EEOC to collect pay data for a second year - either 2017 data, also due September 30, or 2019 data, due in the Spring of 2020. The EEOC has until May 3 to determine whether 2017 or 2019 data will be required.

This pay data reporting will require significant additional work by employers to comply. Currently, employers with 100 or more employees (and certain federal contractors with at least 50 employees) are required to submit annual "EEO-1" reports. These reports divide the workforce into 10 job categories, and then report the race, ethnicity and sex of the workers in each category.

The pay data reporting will require the employer to further subdivide each job category into 12 "pay bands" based on annual W-2 earnings. So, for example, if the employer previously reported there were 10 African American, female employees in the job category "Sales Worker," the employer now will be required to place each of those 10 workers into one of the 12 "pay bands" that correspond to the employee's annual W-2 wages. Further, the employer will be required to report the aggregate total hours worked by the employees in each category and pay band.

The original announcement cited the need to focus EEOC wage discrimination investigations, and to provide employers a means to evaluate their own pay practices, as benefits of the expanded pay data reporting. If nothing else, the reinstatement of this requirement should serve as a reminder to all employers about the attention being paid to pay disparity issues, and perhaps serve as the impetus for an internal review of pay practices.

The September 30 deadline for the pay data reporting will create a two-step reporting process this year. The basic EEO-1 report deadline this year is May 31. That report must be submitted as scheduled, with a second report including the pay data submitted by September 30, 2019.



There is no need to include the pay data with the basic EEO-1, and in fact it may not even be possible to submit that information yet. The EEOC has little information posted about this process, and reportedly will retain a third party to manage this information. In addition, there is always the chance that the judge's order will be appealed, further delaying the process. But in the event the September 30 deadline stands, an employer may want to consider now how it would capture the data needed to comply.