

# Labor and Employment Alert

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## Employers Must Report 2017 and 2018 Pay Data to the EEOC by September 30, 2019

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### Key Points

- A court has ordered the EEOC to begin collecting detailed pay data on a revised EEO-1 form, and covered employers should prepare to report such data to the EEOC for calendar years 2017 and 2018 by September 30, 2019.
- Absent a stay issued by the appellate court, the EEOC expects to begin collecting the new pay data in mid-July 2019.
- Employers still must report the traditional demographic data for 2018 (without the pay component) by the May 31, 2019, filing deadline.
- Employers should consider conducting a pay equity audit, under the guidance of counsel, to ensure compliance with all applicable laws.

In response to a court order reinstating an Obama-era pay data collection rule, the Equal Employment Opportunity Commission (EEOC) has announced that covered employers will be required to report pay data and hours worked for a snapshot of their workforce from calendar years 2017 and 2018, broken down by gender, ethnicity and race. The deadline for submission is September 30, 2019.

Under the EEOC's longstanding collection practices, private employers with 100 or more employees (and certain federal contractors) have been required to submit annual EEO-1 reports with workforce data on the gender, ethnicity and race of employees in 10 specified job categories. In 2016, under President Obama, the EEOC and Department of Labor announced their intent to revise the EEO-1 form. The revised EEO-1 has two parts: Component 1, which is the current EEO-1 that collects the gender, ethnicity and race demographics in the 10 specified job categories; and a new Component 2, which will collect pay data and hours worked in 12 pay bands, broken down by gender, ethnicity and race in the same 10 specified job categories as Component 1. Pay information is to be based upon W-2 earnings (Box 1). Actual hours worked must be reported for nonexempt employees, and for exempt employees, employers have the option of using a proxy of 40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees, multiplied by the number of weeks the individuals were employed during the reporting year.

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The new EEO-1 Component 2 reporting requirements are aimed at identifying potential pay disparities between male and female employees, and among employees of different races and ethnicities, making it easier for the EEOC to pursue investigations into systemic compensation discrimination. The Office of Management and Budget (OMB) issued its approval of the revised EEO-1 form in September 2016, and the new pay data collection obligations were set to begin in 2018. As discussed in our recent Bloomberg Law article, available [here](#), in August 2017, under the Trump administration, the OMB decided to initiate a review and stay of the implementation of pay data collection under Component 2.

In November 2017, several advocacy groups filed suit, arguing that the OMB's decision to freeze implementation of pay data collection was without basis in law. After months of litigation, Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia sided with the advocacy groups, vacated the stay and reinstated the collection of Component 2 data. Judge Chutkan ordered the EEOC to collect Component 2 data for 2018 by September 30, 2019, and gave the agency the option to either collect 2017 pay data by September 30, 2019, or instead collect 2019 pay data during the 2020 EEO-1 reporting period. The EEOC has opted to collect 2017 pay data, in addition to pay data for 2018. The May 31, 2019, deadline to report Component 1 data for 2018 remains unchanged.

On May 3, 2019, the Department of Justice filed a notice that it is appealing Judge Chutkan's order. Absent a stay issued by the U.S. Court of Appeals for the D.C. Circuit, however, employers will have to submit Component 2 data for calendar years 2017 and 2018 by the September 30, 2019, deadline and should prepare accordingly.

The EEOC expects to begin collecting Component 2 data by mid-July 2019, and will be providing additional guidance over the coming months on how the data should be collected and reported. Employers should continue checking the EEOC's website for updates. The EEOC has also said it anticipates launching a helpdesk sometime in the next three weeks to assist employers with questions about the collection of Component 2 pay and hours worked data.

While awaiting further guidance from the EEOC, employers should consider assessing how the required Component 2 data will be collected and reported by the September 30, 2019, deadline. For example, employers should identify where the data is stored and evaluate whether they are equipped to handle the Component 2 report internally or will need to collaborate with an outside vendor to generate and file the report.

Employers also should consider what their pay data might look like to the EEOC and other enforcement agencies, and be prepared to explain the data in the event that they are targeted for an investigation. A pay equity audit with the guidance of counsel will help employers group employees who are similarly situated in terms of compensation, identify any potential pay disparities, determine whether those disparities can be explained by legitimate nondiscriminatory factors and remedy unexplained pay differences where they exist.

Finally, employers should continue submitting Component 1 data for 2018 by the May 31, 2019, deadline, unless granted an extension. The EEOC recently shortened the extension period to report Component 1 data from 30 days to two weeks, so the extension deadline, if granted, is now June 14, 2019. Employers can submit Component 1 data [here](#).

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