

The EEOC Pay Data Requirements Are Back – It's Time for Employers to Pay Attention

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Recent developments will soon require employers with more than 100 employees to report their pay data to the U.S. Equal Employment Opportunity Commission (“EEOC”).

On March 4, 2019, the U.S. District Court for the District of Columbia revived a 2016 EEOC requirement that employers report the wages and hours of their workers, broken down by gender, race, ethnicity and job category (executives, professionals, sales workers, etc.). The deadline for compliance with the requirement is currently set for May 31, 2019.

Most private employers and federal contractors are already required to annually disclose employment data that is categorized by gender, race, ethnicity, and job category to the EEOC using the agency’s form EEO-1 Report. The EEOC’s decision to expand its required collection to include pay data originated from a prior proposal by the Department of Labor to collect pay data from federal contractors as a means of addressing wage disparities.

The EEOC finalized its pay data collection requirement in August 2016; however, the White House’s Office of Management and Budget (“OMB”) later stayed the implementation of the collection requirement on the ground that it would be too burdensome for employers. Advocates for expanded reporting filed suit against the OMB and the EEOC in November 2017. The U.S. District Court for District of Columbia subsequently ruled that the OMB failed to provide an adequate basis for its decision to stay the data collection. Consequently, the court vacated the stay and ordered the EEOC to implement the collection requirement.

It remains unclear whether the OMB will appeal this latest decision and whether employers will need to comply with the EEOC’s requirement by its stated May deadline. Accordingly, it is anticipated that the EEOC will soon issue guidance to employers regarding the timing of its pay data collection requirement. In the meantime, employers should take note of possible pay disparities within their workforces and take steps to ensure that their pay records are up to date.

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