



# EEOC Proposes Sept. 30 Pay Data Reporting Due Date; Stay Tuned For Final Word

Insights

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In a court filing yesterday, the EEOC suggested that employers have until September 30, 2019 to turn over pay data as part of their revised EEO-1 reporting obligations. It is uncertain yet as to whether the plaintiffs challenging the government's actions will go along with this plan, and, more importantly, whether the federal court who resurrected the pay data reporting requirement will be on board with this suggested timeframe.

## Quick Background

For a quick review of what has unfolded over the past few weeks, read our March 5 alert: "[Late Night Shocker: EEO-1 Once Again Poised To Gather Pay Data Information](#)," and our March 18 follow-up: "[Employers Get A Pay Data Reporting Reprieve – But For How Long?](#)" The upshot is that a federal court in D.C. revived the Obama-era requirement that calls for employers to turn over compensation information along with general demographic data the next time you submit your EEO-1 Report. The judge's March 4 order required the pay data collection to commence immediately, but when the EEOC unveiled its 2019 reporting system on March 18, there was no method by which employers could have included such information even if they wanted.

## Court Filing

In response, the judge called a status conference to allow the plaintiffs and the EEOC to state how they thought the pay data collection should proceed logistically. She asked the EEOC to submit its position by yesterday, and the plaintiffs have until April 8 to provide their response. In yesterday's filing, the agency said that September 30 was the soonest it would be able to be in a position to accept the mountain of data that would come its way, and even such, it would need to hire an analytics contractor to adjust its information collection capabilities in order to do so. It told the court that its efforts would cost over \$3 million.

## What's Next?

The plaintiffs will present their response to the agency's position in the next few days, and it is possible that third-party organizations (both business advocates and worker advocates) will weigh in as well. The judge will then issue a final ruling establishing a reporting deadline. The judge's March 4 order had said that the pay data reporting requirements were to be implemented "effective immediately," so any revision from that expectation will need to come in the form of a formal court order, even if just a bare-bones text order.

But the battle won't end there. Once a deadline is set, you can expect independent legal actions to be filed by employer organizations that disagree with whatever the final decision ends up being. If the 2018 pay data is due September 30, for example, that will present a difficulty for employers given that it just a day before the 2019 data collection payroll period begins. And you can also expect an appeal of the judge's initial decision resurrecting the pay data reporting requirement in the first place, which could lead to an indefinite delay in reporting.

### **What Should Employers Do?**

You should assume that you will need to turn over 2018 pay data and hours worked in time to meet a September 30, 2019 deadline. This begins with a determination of how your W-2 pay data will be split into the 12 pay bands required for each of the 10 EEO-1 categories. But it's possible the deadline will revert to March 31, 2020 (the typical due date for the EEO-1 Report) or set with some other deadline. And if the pay data reporting requirement is once again put on ice, you will be pleasantly surprised and ahead of the game should the requirement be once again revived.

### ***Related People***

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