



# Court Forces EEOC To Continue Collecting Pay Data In 2019

Insights

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A federal judge yesterday ordered the EEOC to continue its pay data collection efforts and complete its efforts into next year, ruling that an insufficient number of employers have submitted their revised EEO-1 reports. Although the agency tried to shut down the pay data collection process by pointing out that over 80% of eligible employers had turned in their 2017 and 2018 compensation information, the court said that more could be done and ordered the agency to keep at it and complete its work by January 31, 2020.

## Quick Background

As most employers are well aware, in March a federal court in Washington, D.C. revived the Obama-era requirement that called for employers to turn over compensation and hours worked information in the EEO-1 Report along with general demographic data. This was intended to identify pay gaps, which the agency could then use to target specific employers, industries, or geographic regions and investigate pay discrimination practices. The EEO-1 Component 2 Report required employers to gather and submit employees' hours worked and pay information broken down by job category, race, ethnicity, and sex. The agency announced in May that the due date for submissions would be September 30, 2019, and that employers would be on the hook for turning over two years' worth of pay data – for 2017 and 2018 – by the deadline.

The court ruled that the pay data collection would be considered complete when the number of employers turning over Component 2 data matched the same percentage of EEO-1 filers that have typically turned in their reports over the past four years.

## EEOC Wanted to End Collection Soon After Deadline

A week after the September 30 deadline, the EEOC asked the court to conclude that its pay data collection efforts be deemed complete. It contended that the average percentage of employers that turn in EEO-1 reports by the deadline is about 73%, and that it had reached 81% for the pay data collection at this reporting period. Thus, it said, it had done its work and could shut down the collection portal.

## Court: "Not So Fast"

The Court disagreed. It said that the percentage that should be examined is the "mean percentage" of employers who ended up turning in an EEO-1 report at any point, not just by that year's deadline. And, the plaintiffs argued that over 98% of employers required to complete the EEO-1 have done so in the past four years, including those submitted after the filing deadline.

“The court recognizes the burden the possibility of collecting data from every reporter imposes on the EEOC,” the judge said. “But at this stage, the EEOC has not even collected the average response rate it calculates for reporters who submitted data within the grace period (rather than at the deadline) in previous years.” She ordered the agency to continue its efforts and complete the collection process by January 31, 2020.

### **What’s Next?**

The court never actually ruled that the EEOC must collect 98% of potential EEO-1 reports in order to be relieved of its obligation. However, it seems that this figure is the target that the court has in mind. The agency will now have to provide status reports to the court every three weeks, and will need to submit a final proposed order and report in early February. We’ll monitor the progress and provide updates as warranted.

For employers, the message is clear: if you are required to complete an EEO-1 Component 2 Report and haven’t done so yet, you need to do so immediately. The agency will continue to be motivated to enforce the court order and may take steps to ensure all negligent employers have turned in the required information.

### ***Related People***



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### ***Service Focus***

Pay Equity and Transparency