



## EEOC May Unveil New Pay Data Reporting Plans In 2020

Insights

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Employers may have to prepare for an entirely new pay data reporting requirement to be revealed in the new year, but you can expect that any such proposal would not be as cumbersome or invasive as the current system. The Equal Employment Opportunity Commission (EEOC) announced yesterday during the release of the Fall Regulatory Agenda that it is considering initiating a rulemaking process that “may include a new reporting requirement by which employers would submit pay data or related information as reasonable, necessary, or appropriate for the enforcement and the Equal Pay Act.” But all signals point to this next version of pay data collection – which could be revealed in September 2020 – being more palatable to employers.

As a reminder, the current system requiring most employers to turn over a mountain of pay data and hours worked information is not one supported by the current EEOC leadership. It was the prior administration’s EEOC that called for employers to turn over this information in the EEO-1 Report. And even though the Trump-era EEOC tried to scrap the requirement, a federal court in Washington, D.C revived it in March 2019.

We received a clear indication that the current EEOC, chaired by Janet Dhillon, was not a fan of the Obama-era rule. It announced in September that it will halt further collection of pay data during future EEO-1 reporting cycles, essentially saying that the current pay data disclosures (which were due on September 30) would be a one-time predicament. And while the court system may have something to say about that pronouncement, this statement was a strong signal to employers that the EEOC would do what it could to ease their burdens.

Yesterday’s announcement was the next step to wrest back control from the courts and establish the agency’s own favored method of addressing pay equity concerns in a way that balanced the interests of employers. As the EEOC noted, it may aim to start the public comment process in September 2020 regarding “the potential benefits to its enforcement of antidiscrimination laws, appropriate methods of collecting pay data, and burdens on respondents to collect and report pay data or related information under proposed alternatives.” The agency also said it would examine “other alternatives” suggested by commenters, and expected to keep the public comment period open for two months.

Besides being open to public comment, the EEOC said it will once again look back to the study it commissioned from the National Academy of Science (NAS) in 2012 that examined the potential benefits and burdens of pay data collection. At that time, it received recommendations to prepare a

benefits and burdens of pay data collection. At that time, it received recommendations to prepare a comprehensive plan for use of compensation data, ensure that any data collection would actually enhance its enforcement efforts, and assess its own capacity for the collection and analysis of the data, among other things. “In addition,” the EEOC said, “many localities and states have implemented their own models for collecting data and/or obtaining employer compliance and transparency, and the EEOC plans to learn from those state and local efforts.”

We will continue to monitor these developments and provide updates, so you should ensure you are subscribed to Fisher Phillips’ alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our Pay Equity Practice Group.

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