



EEOC Pay Data Won't Be Used Against Federal Contractors

Insights

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In an announcement sure to please federal contractors, the OFCCP announced Friday that it would not use any of the pay data gathered by the EEOC in this year's expanded collection efforts for enforcement purposes. The [November 22 release](#) is just the latest example of the federal government's taking active steps to diminish the pay data collection requirements forced on the administration following a surprise court ruling in March.

By way of brief background, the Obama-era [EEOC created a rule calling for employers](#) to turn over a mountain of pay data and hours worked information as part of the annual EEO-1 Report requirement. While the [Trump EEOC tried to scrap the requirement](#), a federal court in Washington, D.C. [revived it](#) in March 2019, and employers were required to turn over the compensation information [for both 2017 and 2018](#) by a September 30, 2019 deadline.

But Friday's release means that the Office of Federal Contract Compliance Programs (OFCCP) – the branch of the Labor Department charged with overseeing federal contractors – will essentially ignore the data gathered during the information sweep (called "Component 2" data given the EEO-1 Report's new format). [As the agency said](#), "the OFCCP will not request, accept, or use" the compensation information, as it "does not expect to find significant utility in the data given limited resources and its aggregated nature."

Harvey D. Fort, the Deputy Director for the OFCCP's Division of Policy and Program Development, [stated in the release](#) that the OFCCP "has reviewed the parameters of the EEO-1 Component 2 data collection and has determined that it does not find Component 2 data necessary to accomplish its mission to ensure federal contractors are not engaged in unlawful pay discrimination." He pointed out, on behalf of the agency, that the pay information collected is so "highly aggregated" that it is "too broad" to provide much utility to the OFCCP. "The data is not collected at a level of detail that would enable OFCCP to make comparisons among similarly situated employees as required by the Title VII standards," he said. For this reason, the examination of pay data information would "put an unnecessary financial burden" on an agency with "limited resources."

While this is fortuitous news for federal contractors, it does not mean that you will be without scrutiny when it comes to your pay equity practices. As the release notes, the agency continues to conduct compensation analyses as part of its compliance review/audit process. The OFCCP's enforcement efforts lead to the collection of the kinds of up-to-date, employee-level pay data that would allow the OFCCP to hold contractors up to the pay equity standards required by federal law

would allow the OFCCP to hold contractors up to the pay equity standards required by federal law. And what does it mean for employers who are not federal contractors? In immediate terms, not much. But it is just the latest indication that the current administration puts little stock in the pay data collection efforts. Back in September, [the EEOC announced](#) 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 exercise. And just last week [the agency announced](#) that it would be revealing an entirely new pay data reporting requirement in the new year, one that would not be as cumbersome or invasive as the recent Component 2 required. Friday's announcement by the OFCCP is just the latest salvo in the ongoing battle over the pay data collection efforts, which appears to be heating up right as the calendar is about to turn to a critical election year.

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 [Affirmative Action and Federal Contract Compliance Practice Group](#) or our [Pay Equity Practice Group](#).

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