



White House Blocks Revised EEO-1 Report

EMPLOYERS' PAY DATA REPORTING HALTED – FOR NOW

Insights

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The Office of Management and Budget (OMB) announced late Tuesday that it was implementing an immediate stay of the revised EEO-1 Report, putting a halt to long-awaited pay data reporting requirements. The stay creates much needed relief for employers, but is expected to further refocus pay equity discussions on a statewide and local level.

Quick Recap Of Pay Data Reporting

Historically, employers with 100 or more employees, and federal contractors with 50 or more employees, have been required to submit Employer Information Reports (EEO-1 Reports) disclosing the number of employees in their employ by job category, race, sex, and ethnicity on an annual basis. Last year, the EEOC finalized proposed changes to the EEO-1 Report which would require employers to include pay data and the number of hours worked for their workforces. The proposed reporting expansion was intended to identify pay gaps, which the agency could then use to target specific employers and investigate pay discrimination practices.

The revised form, revealed in October 2016, required employers to submit the newly requested data based on a “workforce snapshot” of any pay period between October 1, 2017 and December 31, 2017. It was due to be submitted by March 31, 2018.

Fisher Phillips, along with the U.S. Chamber of Commerce and other observers, identified serious flaws in the proposed rule. Our firm submitted comments to the EEOC regarding undue burdens that would be placed on employers by the disclosure of pay data, and questioning the utility of such data collection. Following pushback by numerous business groups, the EEOC announced it would issue a second set of revisions to the form. However, the revisions encompassed only two minor changes and failed to alleviate significant employer concerns. Businesses across the country had thus been preparing to usher in a new day when it came to having their pay practices placed under a federal microscope, and until yesterday, it appeared inevitable that the disclosure would proceed as planned.

Feds Press Pause On Pay Data Reporting

All of that changed yesterday with the announcement from the federal government. In issuing an immediate stay of the revised EEO-1 report, the OMB articulated its own concerns with the revised

reporting requirements. The office announced: “Among other things, OMB is concerned that some aspects of the revised collection of information lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues.”

Employers are still required to submit EEO-1 Reports using the previously approved form. The deadline for submission of 2017 data remains March 31, 2018. However, employers can breathe a sigh of relief when it comes to the proposed expanded pay data reporting requirements – for now.

Whether this development foreshadows the ultimate demise of the revised EEO-1 Report is currently unclear. However, national attention on wage inequities remains despite yesterday’s announcement, and the focus on pay equity enforcement is increasingly shifting to state and local levels. States like California, New York, Massachusetts, Oregon, Nevada, and others have all passed pay equity legislation in the last year. Many of these states have included unique comparator standards and varying evidentiary burdens in their specific new laws. Consequently, with each state acting as its own incubator for how to best address these disparities, pay equity analysis and related litigation is becoming more complicated.

Accordingly, we still recommend you conduct a gender-specific internal pay audit, and possibly a race and ethnicity audit, to gain an understanding of your pay practices. Due to the increased complications caused by varying state legislative developments, we strongly encourage you to get your attorney involved in this analysis early in the process. As the future of the revised EEO-1 is resolved in the coming months, we will continue to assess the situation and provide necessary updates.

For more information, or contact any member of our [Pay Equity Practice Group](#) or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a specific federal government announcement. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Service Focus

Pay Equity and Transparency