



# September 30 Is Your Pay Data Reporting Due Date

Insights

4.25.19

A federal court announced today that employers have until September 30, 2019 to turn over pay data as part of your revised EEO-1 reporting obligations. After several weeks of uncertainty, you now have a definitive due date to mark on your calendars for this unprecedented new obligation. While there is still a chance that an appeals court could put the pay data reporting requirement on hold once again, you need to start taking action immediately under the assumption that September 30<sup>th</sup> is the actual due date for the delivery of your 2018 compensation information. This ruling is very significant because it impacts all employers with 100 or more workers.

## Quick Background

As we told you early last month, a federal court in Washington, D.C. in the matter *Nat'l Women's Law Ctr. v. OMB, D.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 requirement substantially increases employers' reporting requirements because it now requires employers to submit data into 10 job categories and 12 pay bands categorized by race, sex and ethnicity. The judge's March 4 order required the pay data collection to commence immediately, but when the Equal Employment Opportunity Commission (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.

In response, the judge asked the EEOC how they thought the pay data collection should proceed. 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.

## What Happened Today

The advocacy organizations that took the White House to court to force the beefed-up EEO-1 report back into service (including the National Women's Law Center and the Labor Council for Latin American Advancement) were not happy with this plan. They asked the court to reject the proposed September 30 deadline and pushed for a May 31 deadline for the collection of 2018 pay data.

The court held the EEOC's feet to the fire. Ruling from the bench, Judge Chutkan sided with the EEOC and informed the agency that it needed produce the 2018 pay data by September 30, 2019.

## What's Next?

The EEOC announced that it would open the online collection portal for employers to submit their pay data by July 15. It also announced that, prior to that date, it would offer a series of training sessions and provide detailed information to employers so that you are able to comply with the new requirements.

The battle is most likely not over. Now that a deadline is set, you can expect independent legal actions to be filed by employer organizations that disagree with the final decision. No doubt that employers will point out that the September 30 deadline for 2018 information will present a difficulty for employers given that it is just a day before the 2019 data collection payroll period begins. Moreover, we would not be surprised if the federal government appeals the judge's initial decision resurrecting the pay data reporting requirement in the first place and asks for an indefinite delay in reporting while appeal is pending.

### **What Should You Do?**

But for now, you should assume that you will need to turn over 2018 pay data and hours worked in time to meet the 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. You should also make it a priority to review current pay systems and identify and address any areas of pay disparity. It is critical to take steps now to minimize increased scrutiny that could soon come your way. Ideally, you would work with counsel to conduct this initial review under the protection of the attorney client privilege while you are assessing your workforce and the proper grouping for your employee population.

By conducting your own audit of pay practices, you will be able to determine whether any pay gaps exist that might catch the eye of the federal government if you are forced to turn over this information. You may have time to determine whether any disparities that may exist can be justified by legitimate and non-discriminatory explanations, or whether you will need to take corrective action to address troublesome pay gaps. 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.

We will continue to assess the situation and provide necessary 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](#) or our [Affirmative Action and Federal Contract Compliance Practice Group](#).

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