



# Pay Data Collection May Just Be A One-Time Predicament

Insights

9.11.19

Citing the high burden on employers and the unproven usefulness of the program, the EEOC announced today that it will halt further collection of pay data during future EEO-1 reporting cycles. While you still need to turn over compensation information from both 2017 and 2018 when you submit your Component 2 pay data as part of your EEO-1 submission by September 30, today's announcement may mean this will be a one-time effort that may not need to be repeated in 2020. What do you need to know about today's news?

## Brief Background

As most employers are acutely aware, a federal court in Washington, D.C sent shockwaves through the country in early March by reviving the Obama-era requirement calling for employers to turn over compensation and hours worked information in the EEO-1 Report along with general demographic data. The proposed reporting expansion 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 revised form would include a section collecting "Component 2" data, which would require 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 – both for 2017 and 2018 – at this deadline. And although the EEOC initiated an appeal against the court ruling that is still pending, the agency confirmed that this Notice of Appeal does not pause the court's orders or in any way alter EEO-1 filers' obligations to submit pay data.

## With Today's Announcement, EEOC Seeks To Take Back Power From Court

Despite the fact that it could not stop the court from enforcing the Obama-era rules requiring pay data collection in 2019, the EEOC's announcement today seeks to wrest back power from the court and put a halt to any future efforts. EEOC Chair Janet Dhillon released a 9-page report on behalf of the Board in the Federal Register today, scheduled for publication on September 12, reestablishing the agency's authority when it comes to pay data.

The agency said that it reexamined the methodology used to calculate how much of a burden the data collection would cause employers. After a thorough analysis, the EEOC said it now "concludes that the burden estimate associated with the EEO-1 is higher than ... previously estimated." It said that previous efforts "insufficiently calculated" the burden on employers.

It also took a shot across the bow of those who believe the pay data collection is of value in addressing and closing the gender pay gap. “The unproven utility to its enforcement program of the pay data ... is far outweighed by the burden imposed on employers that must comply with the reporting obligation.” For these reasons, the EEOC said it will not be seeking to renew Component 2 of the EEO-1 in future years beyond 2019.

### **What Does This Mean For Employers?**

While this is a step in the right direction, employers should keep two important points in mind: nothing about today’s announcement relieves you of your current obligation to provide 2017 and 2018 pay data by September 30, and it is possible that a court or future administration intervenes and forces the EEOC to once again open up the EEO-1 to require Component 2 data in 2020 or beyond.

You only have a few weeks to finalize your EEO-1 submission for 2019, so if you haven’t started yet, the time is now. You should begin by determining how your W-2 pay data will be split into the 12 pay bands required for each of the 10 EEO-1 categories. And you need to determine how you will report your hours worked, which is also a significant undertaking, where the data is likely tracked separately from the pay data W-2 information.

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 may 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(s) 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 or when 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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