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Judge Orders Employers to Submit Pay Data on Revised EEO-1 Form by September 30, 2019

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Introduction:

On April 25, 2019, Judge Tanya Chutkan ordered the U.S. Equal Employment Opportunity Commission (EEOC) to collect detailed data on employee compensation and hours worked from covered employers sorted by job category, pay band, race, ethnicity, and gender ("Component 2" of the EEO-1 form) by September 30, 2019. The reporting requirement applies to all employers with more than 100 employees.

The Component 2 requirement had been adopted during the Obama Administration but its implementation was stayed by the Office of Management and Budget ("OMB") in 2017. In a prior ruling, Judge Chutkan lifted the OMB's stay, leading to much uncertainty among employers about when they may have to report their pay data. Judge Chutkan's April 25 ruling provides employers with an answer, although it is still possible the federal government will appeal her decision and seek to stay her order.

Despite the continued uncertainty, employers are well-advised to reacquaint themselves with the Component 2 reporting requirement and begin preparations in the event the September 30 deadline is not lifted. Below we provide employers with some basic information to help them understand what Component 2 requires and how best to prepare.

Component 2 Requirements:

Component 2 requires employers with over 100 employees to report certain pay data for their employees. Employers report pay data for employees who were employed during the "Workforce Snapshot Period" – a pay period the employer chooses that falls between October 1 and December 31. For these employees, employers identify the number of employees by race/ethnicity and sex within each of the ten EEO-1 job categories who fall within 12 defined pay bands. In addition, for each job category and pay band, the employer must report hours worked information for the applicable employees.

Employers will determine each employee's pay band based on W-2 Box 1 income. Earnings reported in Box 1 include base pay, overtime wages, shift differentials, commissions, bonuses, and fringe benefits. For the hours reporting requirement, the EEOC's regulation provides the following guidance:

- For FLSA non-exempt employees, employers will report the total number of hours worked for the entire calendar year for all employees in each pay band by ethnicity, race and gender.
- For FLSA exempt employees, employers will have the option of 1) using a 40 hour per week proxy for full-time employees and a 20 hour per week proxy for part-time employees, multiplied by the number of weeks the individuals were employed during the EEO-1 reporting year, or 2) providing the actual hours worked during the EEO-1 reporting year if the employer maintains accurate records of that information.

As is evident from the discussion above, Component 2 requirements will greatly increase the complexity and burden of employers' EEO-1 reporting obligations. Employers should not underestimate the complexities involved in preparing the data for such reports.

Next Steps:

Judge Chutkan ordered the EEOC to release a statement on its website by April 29 informing employers of the Judge's decision and providing guidance about their reporting requirements. The EEOC has until early May to appeal the Judge's ruling, so there is a possibility the September 30 deadline could be stayed again. Employers are still required to submit Component 1 data (basic employee counts by race/ethnicity and sex) by May 31.

We will continue to provide our readers with updates on this matter as warranted.

Related Professionals

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