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EEOC Will Not Seek to Renew Component 2 (Pay and Hours Data) Requirements for Future EEO-1 Reports

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The EEOC announced today, September 12, 2019, that it "is not seeking to renew Component 2 of the EEO-1" in a notice published on the Federal Register.

As we have previously reported, Component 2 of the EEO-1 report requires employers with over 100 employees to report its employees' compensation and hours worked (sorted by pay band, job category, race ethnicity, and gender). The Obama Administration initially adopted the addition of Component 2 reporting requirements, but its implementation was stayed by the Office of Management and Budget ("OMB") in 2017. The OMB stay was challenged in *National Women's Law Center et al v. Office of Management and Budget,* where the federal district court for the District of Columbia ruled that the OMB failed to sufficiently justify blocking the implementation of the Component 2 requirement. Subsequently, in April 2019, the court ordered that covered employers must report Component 2 data by September 30, 2019. The EEOC's September 12th decision not to seek the renewal of the Component 2 requirements indicates that this may be a one-time reporting requirement for employers.[1]

Under the Paperwork Reduction Act ("PRA"), the EEOC must request approval from OMB when it seeks to require certain disclosures of information from the public, and renew such requests prior to the expiration of OMB's approval (an approval typically expires 3 years after it is granted.) The current approval for the current EEO-1 expires on September 30, 2019. The EEOC filed the September 12th notice to renew its request to collect Component 1 data, and to clarify that it is not seeking to renew its request to collect Component 2 data. The EEOC based its decision not to seek the renewal of Component 2 on the "unproven utility" of pay data to its enforcement programs. The agency noted that, under the PRA, it has a responsibility to "balance the utility of the data it collects against the burden the data collection as structured imposes on the employers who must submit it." According to the EEOC "the burden estimate associated with the EEO-1 is higher than it [] previously estimated". The EEOC's previous burden estimation put the total annual burden hour cost for completing both Components 1 and 2 of the EEO-1 at $53,546,359.08. The EEOC has "developed a more accurate methodology" for calculating the burden cost to employers and estimated that the "burden hour costs for submitting both Components 1 and 2 would be $614,391,388 in 2017 and $622,015,798 in 2018." The EEOC concluded that the utility of collecting Component 2 data was "far outweighed" by this immense reporting burden on employers.

The September 12th notice states that, despite the higher burden indicated above, the EEOC will continue its collection of Component 1 data (which is limited to race and sex information) in light of its long proven utility in the enforcement of employment discrimination laws.

Even though the EEOC's decision is welcome news, employers still must make their 2017 and 2018 Component 2 submissions by September 30, 2019 and the EEOC may resurrect Component 2 at a later time. Moreover, if we have learned anything over the past six months it is the difficulty of predicting what will happen when it comes to Component 2. In other words: Stay Tuned.

We will continue to report on this developing story as new details emerge.

[1] The September 12th notice states that "if the EEOC seeks to pursue a pay data collection in the future it will do so using notice and comment rulemaking and a public hearing pursuant to Title VII of the Civil Rights Act of 1964."

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