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Ninth Circuit Orders Release of Federal Contractor EEO-1 Reports

Government Contractor Compliance & Regulatory Update on **August 4, 2025**

On July 30, 2025, the U.S. Court of Appeals for the Ninth Circuit ruled that the Department of Labor ("DOL") must disclose federal contractor EEO-1 Reports requested by the Center for Investigative Reporting ("CIR"). The court held that the EEO-1 Reports are not protected from disclosure under the FOIA exemption for "trade secrets and commercial or financial information" ("Exemption 4").

Background

In 2022, OFCCP published a notice in the Federal Register notifying contractors of CIR's broad FOIA request for all EEO-1 Reports filed by federal contractors and first-tier subcontractors between 2016 and 2020. OFCCP provided contractors with notice and opportunities to object to the disclosure of their EEO-1 data.

Following the objection process, OFCCP publicly released on its website the EEO-1 data for those contractors that either affirmatively agreed to, or did not object to, the release of their information. However, OFCCP withheld the EEO-1 Reports of 4,796 contractors that submitted objections pursuant to Exemption 4, which protects from disclosure "commercial or financial information obtained from a person and privileged or confidential," as well as information protected under the Trade Secrets Act.

CIR filed suit to compel disclosure of the withheld EEO-1 Reports. The DOL and CIR filed cross-motions for summary judgment. The district court granted summary judgment in favor of CIR, finding that the EEO-1 Reports did not qualify as "commercial" information under Exemption 4, determining the information "cannot itself yield any commercial insight that is specific to the operations of the federal contractor" and "does not speak to the commercial contributions of a company's workforce." The court also rejected the DOL's argument that disclosure of multiple years of reports would reveal sensitive operational insights, as the data would likely be "stale" by the time of its release. Additionally, the court held that the EEO-1 Reports were not protected as "confidential statistical data" under the Trade Secrets Act.

The DOL appealed the district court's ruling to the U.S. Court of Appeals for the Ninth Circuit.

The Court's Reasoning

In a unanimous opinion issued on July 30, 2025, a Ninth Circuit panel affirmed the lower court's ruling that the EEO-1 Reports do not qualify as "commercial" information under Exemption 4. The court explained that "[i]nformation is 'commercial' under Exemption 4 if it either is an object of commerce or has commerce as its subject. That is, 'commercial information' (1) is made to be bought and sold or (2) describes an exchange of goods or services for profit."

The court found that the EEO-1 reports do not reveal details about contractors' products, services, pricing, or profits. Instead, they simply provide aggregated data on workforce composition. As the opinion states:

"The workforce-composition data in the reports at issue do not describe 'the exchange of goods or services or the making of a profit.' … Instead, the reports describe only two types of information about federal contractors' workforces: (1) data on the number of employees in each of ten general job categories and (2) demographic data on the employees' race, sex, and ethnicity. They do not disclose any details about the services provided by federal contractors, the prices charged for those services, the resulting profits, the terms of the contractors' agreements with the government, or any similar information that we or other courts ordinarily treat as 'commercial.'"

The panel rejected the DOL's argument that the EEO-1 Reports, even if indirectly related to a company's business operations, are sufficiently sensitive or revealing to be considered "commercial" information, finding that "workforce-composition information alone [does not] reveal[] contractors' production details or resulting profits." The court emphasized that "[t]he government may not rely on Exemption 4 where the withheld information only tenuously or indirectly concerns the exchange of goods or services or the making of a profit."

Impact

Absent further appeal, federal contractors and subcontractors should expect that all remaining withheld EEO-1 Reports will be publicly disclosed by the DOL on the OFCCP FOIA Library. The DOL has not yet indicated a timeline for the release of the EEO-1 Reports or if it intends to appeal.

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