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Ninth Circuit's FOIA Ruling Moves Toward Implementation in EEO?1 Disclosure Case

Government Contractor Compliance & Regulatory Update on **February 9, 2026**

On February 5, 2026, the parties in *Center for Investigative Reporting v. U.S. Department of Labor* jointly asked the United States District Court for the Northern District of California to lift the temporary stay that has halted disclosure of certain federal contractors' EEO-1 Type 2 reports. Accordingly, the legal case appears to be effectively over and disclosure is imminent. The parties' request seeks to lift the stay as of February 9, 2026, so that the Department of Labor ("DOL") can begin releases on a set timetable.

Contractors who submitted challenges to the disclosure of their EEO-1 data should be prepared that their data will be disclosed to the Center for Investigative Reporting as early as February 9, 2026. Further, if past practice is any indication, the information will also be posted on the DOL's website and available to the public.

Background

In July 2025, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's order requiring disclosure of certain federal contractor EEO-1 Type 2 reports under the Freedom of Information Act ("FOIA"), concluding that the reports do not contain "commercial" information within the meaning of FOIA Exemption 4. The Ninth Circuit's ruling followed a December 22, 2023 district court decision directing disclosure after rejecting Exemption 4 and Trade Secrets Act objections. As a result of the February 15, 2024 DOL appeal, the district court temporarily stayed the release of the Reports. Although the Ninth Circuit's July 2025 ruling resolved a key legal question, the litigation continued in the district court over implementation and other outstanding issues.

Timeline for Disclosures and Remaining Issues

The parties' February 5, 2026 stipulation asks the district court to lift the temporary stay effective February 9, 2026, and to authorize the DOL to roll out disclosures in phases. Under the contemplated schedule, DOL would first release bellwether objectors' EEO-1 data and provide notice to non-bellwether contractors on February 11, 2026, with publication of non-bellwether data on February 25, 2026.

Even if these disclosures move forward, the court still must address two remaining issues, including whether EEO-1 reports for 621 entities that OFCCP concluded were not federal contractors during the relevant period were properly withheld and the allocation of attorneys' fees and costs.

Federal contractors should anticipate that DOL will proceed with releasing withheld EEO-1 Type 2 data consistent with the FOIA judgment, likely via publication on OFCCP's FOIA Library as has been done with regard to non-objecting contractors' data.

Proskauer will continue to monitor these and other noteworthy developments impacting government contractors here.

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