

EEO-1 Pay Data Deadline Reinstated

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NEXT CHALLENGE. NEXT LEVEL.

All private employers with a workforce of 100 or more who are subject to Title VII must now submit 2017 and 2018 pay data to the Equal Employment Opportunity Commission by September 30. The reinstatement results from a March 4 ruling by Washington, D.C., District Court Judge Tanya Chutkan in *National Women's Law Center v. Office of Management and Budget*, Civ A. No. 17-cv-2458 (D.D.C.). Importantly, the "Component 2" pay data report is not limited to employers who are federal contractors. With the reinstatement of the revised EEO-1 report, subject employers now have two 2019 compliance deadlines: May 31 for the traditional EEO-1 report, including race/ethnicity and gender reporting in each of the 10 occupational categories, and September 30 for the wage and hour/pay data report. In addition to the information required by the traditional EEO-1 Report, the Component 2 report adds a reporting requirement of total annual hours worked for those same employees in each pay band and snapshot pay data within those 12 defined pay bands. The EEOC is prohibited by statute from publishing the employment data derived from the EEO-1 reports prior to the institution of any Title VII proceeding, other than as non-employer-specific aggregate data. As for the timing and logistics of the Component 2 report, the Commission released the following statement:

The EEOC expects to begin collecting EEO-1 Component 2 data for calendar years 2017 and 2018 in mid-July, 2019, and will notify filers of the precise date the survey will open as soon as it is available. On May 3, 2019, the Department of Justice filed a Notice of Appeal in National Women's Law Center. The filing of this Notice of Appeal does not stay the district court orders or alter EEO-1 filers' obligations to submit Component 2 data. EEO-1 filers should begin preparing to submit Component 2 data as described above. <https://www.eeoc.gov/>.

While employers should begin collecting pay data for their employees for a pay period of their choice between October 1 and December 31 of each of the required years, they should likewise wait until the EEOC releases its July guidance for specific logistical details. Given the constant state of flux surrounding the collection and reporting requirements, it is advisable for employers to wait until closer to the September deadline before making any filings. Before filing, employers should also take care to review the data collected and search for any potential disparities that need correcting. Any such review should be performed under attorney client privilege.

The following timeline sets forth the history of Component 2's development:

Condensed Timeline of EEO-1 Component 2 History



Detailed Timeline of EEO-1 Component 2 History

Date	Actions by Parties/Description of Events
2010	The EEOC "joined other federal agencies" to identify ways to improve enforcement of federal laws prohibiting pay discrimination. See <i>Nat'l Women's Law Ctr. v. Office of Mgmt. & Budget</i> , 358 F. Supp. 3d 66 (D.D.C. 2019). The EOC began conducting a study that led to the National Academy of Sciences creating a panel to determine how to measure and collect information from U.S. employers by gender, race and national origin. <i>Id.</i>
2012	EEOC held a two-day meeting with employer representatives, statisticians, HRIS, experts and IT specialists to "review the current data collection procedures, provide feedback on future modernization of the EEO surveys, and engage in brainstorming" that eventually led to individual members submitting their ideas. The idea of collecting pay data, as well as multiple-race category data, on the EEO-1 was included. See <i>Nat'l Women's Law Ctr.</i> , citing 81 Fed. Reg. at 5114. Notably, the report from this group "reflected feedback from participants that the burden of reporting pay data would be minimal for EEO-1 filers." <i>Id.</i>
February 1, 2016	The EEOC published a <i>Federal Register</i> notice announcing its intention to seek a three-year approval from the Office of Management and Budget (OMB) for "a revised Employer Information Report (EEO-1) data collection." See <i>Nat'l Women's Law Ctr.</i> , at 74.
July 14, 2016	The EEOC published a second <i>Federal Register</i> notice seeking approval from OMB for its EEO-1 data collection addition. This notice provided the explanation that the EEOC had to revise the EEO-1 "for the enforcement of equal pay laws." <i>Id.</i> <i>Note:</i> EEOC stated that filings of EEO-1 reports "would be due either by digital upload or by data entry or onto a password-protected, partially pre-populated digital EEO-1." <i>Id.</i>
September 28-29, 2016	On September 28, 2016, EEOC provided Final Supporting Statement for the EEO-1 revised report to OMB. The following day, OMB approved the proposed collection. See <i>Nat'l Women's Law Ctr.</i> , at 75.
August 29, 2017	Neomi Rao (administrator of the White House Office of Information and Regulatory Affairs) sent a memo to Victoria Lipnic (acting EEOC chair) stating that OMB "had decided to initiate a review and stay of EEOC's new collection of pay under Component 2." <i>Id.</i> To support this reasoning, she claimed that the Paperwork Reduction Act authorizes OMB to "review an approved collection of information if OMB determines that the relevant circumstances related to the collection have changed and/or that the burden estimates provided by EEOC at the time of initial submission were materially in error." <i>Id.</i> (citing 5 CFR 1320.10(f),(g).) Rao stated that OMB determined these conditions were met due to EEOC releasing data file specifications for employers after the EEO-1 form was revised. Since the additions were not contained in the <i>Federal Register</i> notices, the additions avoided the public comment process and, as a result, the public did not have an opportunity to provide input on the method of data submission to EEOC. <i>Id.</i> Lastly, the memorandum directed EEOC to publish notice "announcing the immediate stay of effectiveness" of the pay data collection but "confirming that businesses may use the previously approved EEO-1 form in order to comply with their report obligations for FY 2017." <i>Id.</i>
November 15, 2017	The National Women's Law Center (NWLC) and the Labor Council for Latin American Advancement (LCLAA) brought suit against OMB, OIRA, EEOC and their respective chairmen. The Plaintiffs asked the court to 1) "declare that OMB Defendants violated the PRA and Administrative Procedure Act ("APA") and exceeded their statutory authority in reviewing and staying the collection of pay data as part of the EEO-1; 2) declare that the stay announced in the Rao Memorandum and the September 15, 2017 Federal Register notice was a nullity, and that the revised EEO-1 remains in effect; 3) vacate the stay and reinstate the revised EEO-1 reporting requirements; 4) order EEOC Defendants to publish a <i>Federal Register</i> notice announcing this reinstatement or take equivalent action necessary to immediately reinstate the pay data collection; 5) award Plaintiffs their costs, reasonable attorneys' fees, and other disbursements incurred in this action; and 6) grant such other relief as the court may deem just and proper." See <i>Nat'l Women's Law Ctr.</i> , citing Compl. at 34-35.
March 4, 2019	The case was heard before the U.S. District Court, District of Columbia, with Judge Tanya S. Chutkan writing the opinion. The court ordered that the Component 2 obligation be reinstated, and that employers provide employee wage records for two consecutive years: 2018 and either 2017 or 2019. (The choice between 2017 and 2019 was left to the EEOC, which ultimately decided to require 2017 wage records).
April 29, 2019	The deadline Judge Chutkan gave EEOC to put a statement on its website informing employers of the court's decision.
September 30, 2019	Component 2 submission deadline.

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