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EEOC Reinstates EEO-1 Pay Data Reporting Requirements Effective Immediately

5.1.2019

Yesterday the Equal Employment Opportunity Commission (EEOC) announced immediate reinstatement of Component 2 of the Revised EEO-1 Pay Data Reporting requirements for mid-size and large employers, in light of the successful court challenge to the Administration's long delay in implementing that requirement. Two important deadlines for reporting (May 31 and September 30, 2019) were included in the announcement.

In *National Women's Law Center et al v. Office of Management and Budget*, C.A. 17-cv-2458, the federal district court for the District of Columbia held in March 2019 that the Administration had failed to provide sufficient justification for blocking the enforcement of the EEO-1 Component 2 pay data reporting requirement. The court threatened to hold the defendants in contempt for failure to implement the court's order to reinstate the reporting requirements. EEOC and its Chair are among the named defendants in the case.

Yesterday's EEOC immediate reinstatement announcement reminds mid-sized and large employers that, using the existing EEO-1 Portal, they must **submit EEO-1 Component 1** pay data of the Revised Pay Data Reporting Requirements **by the extended deadline of May 31, 2019**.

As for the challenged Component 2 pay data requiring reporting based on gender, race and ethnicity, EEOC chose not to require reporting of 2017 pay data in 2019, as permitted under the district court's detailed April 25, 2019 Order (available here). Instead, the EEOC announcement states that **EEOC "expects to begin collecting EEO-1 Component 2 data for calendar year 2018 in mid-July, 2019, and will notify filers of the precise date the survey will open as soon as it is available."** The announcement provides that **EEO-1 Component 2 data, for the year 2018 only, must be submitted through the expanded portal by September 30, 2019.** The April 25 Order allowed EEOC until May 3,

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2019, to choose to require employers to report either 2017 or 2019 pay data. If EEOC chooses 2017 pay data, then that data must also be reported by September 30, 2019. If EEOC chooses 2019 pay data, then that data must be reported in 2020.

Employers and business advocates claim that the reporting requirements are administratively burdensome and open to misinterpretation. For example, the Chamber of Commerce for the United States informed the district court that its members would need 18 months in order to gather the requested information. Moreover, because EEOC will use a contractor to collect Component 2 data, there have been expressed concerns about the security of employee data to be reported.

The district court has retained jurisdiction to ensure that its April 25 Order is carried out. We will keep employers informed of developments regarding the reporting requirements as they unfold. Please contact the author of this Alert or your Butzel Long Labor and Employment attorney if you have questions about these pay data reporting requirements.

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