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EEO-1 Pay Data Reporting Update

On March 4, 2019, the U.S. District for the District of Columbia issued an opinion reinstating the EEOC's collection of pay data as part of the EEO-1 Report filing. The revised EEO-1 form was an Obama-era change that would have required employers with 100 or more employees to report W-2 wage information and total hours worked for all employees by race, ethnicity and sex within 12 proposed pay bands. The pay data collection requirement was originally slated to go into effect on March 31, 2018 but was stalled after the Office of Management and Budget ("OMB") stayed the implementation of the pay data collection portions of the revised EEO-1 Report.

That decision prompted a lawsuit by the National Women's Law Center and the Labor Counsel for Latin American Advancement against the OMB and the EEOC. In its decision, the Court concluded that OMB's action staying the EEOC's pay data collection tool was an "illegal" arbitrary and capricious decision that lacked a "reasoned explanation." As a result, the Court vacated the stay and ordered that the previously approved revised EEO-1 Report that required the collection of pay data form shall be in effect. Accordingly, on April 3, 2019, the Equal Employment Opportunity Commission (EEOC) announced that employers will have until September 30, 2019, to submit employee pay data as part of their annual 2018 EEO-1 report. On May 3, 2019, a Notice of Appeal was filed in the current litigation dictating this deadline, which could potentially impact the reporting deadline. However, the EEOC has posted a notice on its website taking the position that this Notice of Appeal does not impact the new reporting deadline and that employers should begin complying with the reporting obligations for this year until given further notice.

Specifically, the EEOC's posting states:

EEO-1 filers should begin preparing to submit Component 2 data for calendar year 2017, in addition to data for calendar year 2018, by September 30, 2019, in light of the court's recent decision in National Women's Law Center, et al., v. Office of Management and Budget, et al., Civil Action No. 17-cv-2458 (D.D.C.). 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.

While it is not certain that employers will be required to submit pay data on September 30, 2019, the pending litigation does not affect an employer's current obligation to submit Component 1 data from 2018 by May 31, 2019.

It is our recommendation that employers begin compiling pay data well in advance of the September 30, 2019, deadline because the new EEO-1 requirements require more detailed pay information. For example, the updated

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EEO-1 form requires employers to report wage information from Box 1 of the W-2 form and total hours worked for all employees by race, ethnicity, and sex within 12 proposed pay bands. For more information on complying with the new requirements, contact your Stokes Wagner attorneys.

Questions? Contact Stokes Wagner.