

EEO-1 Pay Data Collection Suspended Indefinitely

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Employers can breathe a sigh of relief. On August 29, 2017, the Equal Employment Opportunity Commission's (EEOC) Acting Chair announced that the Office of Budget Management (OBM), per its authority under the Paperwork Reduction Act (PDA), had immediately stayed the EEOC's pay data collection components of its EEO-1 Report, also known as the "Employer Information Report," that was to otherwise become effective on the next filing deadline of March 31, 2018.

Covered employers—those with at least 100 employees or federal government contractors with at least 50 employees—have long had to file the EEO-1 Report annually. The Report requires covered employers to divulge their employees' race, ethnicity, and gender demographics by job category. Last September 29, 2016, in line with its current strategic plan's focus on pay equity, the EEOC revised the Report to also require employee compensation and hours worked.

The business community had criticized the pay reporting requirements since their inception. Critics argued that the new requirements carry high compliance costs and burdens; cause privacy concerns, as the EEOC has not explained how the data can be used; and are ineffective in explaining perceived pay inequities, as employers have nowhere on the Form to explain legitimate reasons for apparent inequities. Also, as the OBM's announcement pointed out, the EEOC deprived the public of its opportunity to weigh in on pay data's required data collection methods because the Federal Register notice never included such methods.

The EEOC is expected to provide more information on what to expect going forward. Covered employers and federal contractors should assume, for the time being, that this stay does not relieve them of timely annual submission of the EEO-1 Report's other data categories. This stay also does not alter the fact that the EEOC has expressed its strategic focus on pay inequities and will continue to pursue litigation, including the multiple Equal Pay Act lawsuits it has filed this year. Employers also should ensure that any pay differentiations amongst job categories are explainable with legitimate, non-discriminatory reasons.

For more information on this topic, please contact a member of [Benesch's Labor and Employment Practice Group](#).

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