

EEO-1 Pay Data Gathering Reinstated; Compliance Deadline Uncertain

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While a federal judge on Monday reinstated a rule requiring large employers to report pay data by race, ethnicity and sex on their EEO-1 forms, employers are still waiting to find out if that data will be required in 2019.

The controversial rule had been stayed before implementation by the White House Office of Management and Budget, and the court ruled that the office had failed to demonstrate a justification for the stay.

The EEO-1 form, a compliance survey submitted to the Equal Employment Opportunity Commission, must be completed annually by employers with 100 or more employees and by federal contractors with 50 or more employees. Historically, the form has required employers to disclose the number of individuals employed by job category, race, sex and ethnicity. In 2016, the EEOC proposed changes to the form to include pay data and number of hours worked, a move that was intended to identify pay gaps affecting protected groups.

The EEOC unveiled the revised form in October 2016 with a targeted implementation date for the last quarter of 2017. After the election of President Donald Trump, however, the form was put on hold for evaluation of the burdens on employers and to address privacy and confidentiality concerns. The court's order this week reverses that decision and reinstates the revised form.

The timing of required compliance remains uncertain, however, as the 2018 EEO-1 filings are currently due May 31. In her decision, the judge suggested that employers should have been prepared for the possibility that the pay data collection component would be reinstated. However, the EEOC has not yet issued guidance on whether it expects the revised forms during this round, and it seems likely that the administration will appeal the decision and possibly obtain a further stay. Employers should pay close attention over the coming weeks to both the EEOC and the court case (*National Women's Law Center v. Office of Management and Budget*).

In the meantime, employers may wish to conduct a pay audit to ensure full understanding of pay practices and determine whether the revised reporting may reveal significant pay gaps. [Barley Snyder's Employment Practice Group](#) can assist you in this process and will continue to monitor developments in this area.

If you have any questions about the revised EEO-1 reporting requirements, please [reach out to anyone in the group](#).

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