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Future Federal Pay Data Collections Nixed for Now, EEOC Says (1)

By Paige Smith and Jaclyn Diaz

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- Civil rights agency cites burden as reason to not renew
- Calls utility of pay data 'unproven'

A federal uniform pay data collection from employers across the U.S. may be a one-time requirement.

The Equal Employment Opportunity Commission won't renew a controversial pay data collection as part of its annual workforce diversity report, according to a Sept. 11 notice in the Federal Register. The EEOC says the burden to collect the data—known as "Component 2" of the EEO-1 report—is higher than previously estimated, and deserves additional examination before the agency seeks White House approval for more pay reporting.

The current pay collection is set to expire Sept. 30, the same day that more than 60,000 employers must submit their workforce wage-and-hour information for the first time. The EEOC proposed the reporting requirement during the Obama administration, intending to help shrink pay gaps for women and minorities.

"The Commission now concludes that it should consider information from the ongoing Component 2 data collection before deciding whether to submit a pay data collection to OMB," EEOC Chair Janet Dhillon wrote in the notice. "At this point in time, the unproven utility to its enforcement program of the pay data as defined in the 2016 Component 2 is far outweighed by the burden imposed on employers that must comply with the reporting obligation."

For decades, the agency has collected employee data, broken down by race, sex, and ethnicity from companies with 100 or more workers, but it has never collected pay data as part of the EEO-1 report before this year.

The pay data collection that is underway is the result of a federal court order directing the Trump administration to reinstate the collection that it blocked in August 2017. The National Women's Law Center and the Labor Council for Latin American Advancement sued in November 2017, and a federal judge ordered the collection be completed by Sept. 30.

The EEOC is appealing the judge's decisions, but employers are still required to comply with the set deadline.

New Burden Analysis

The EEOC's newly formed Office of Enterprise Data and Analytics reevaluated the burden employers would have to shoulder in order to complete the data submission and found the previous estimate to be insufficient, according to the notice.

"Pursuant to the updated methodology employed in the Notice, the EEOC estimates that the burden associated with submitting Component 1 and 2 data for 2017 would be \$614 million, and \$622 million for 2018," an official statement said. "By contrast, in 2016, the EEOC estimated that the burden to employers for filing Component 1 and 2 reports would be \$53.5 million in each of 2017 and 2018."

The new analysis method "deconstructs the total number of reports submitted by report type and by filer type, and then estimates an average burden based on the number and types of reports submitted," according to the notice.

Every three years, the commission must obtain OMB approval to collect employer data through the EEO-1 report, as required by the Paperwork Reduction Act. The agency is still seeking renewal for the workforce diversity component of the report—known as "Component 1".

Employer representatives said they always knew the cost of the pay data collection for both employers and the EEOC would be much higher than the agency initially predicted and the proposal was far too burdensome.

The collection was always "a very controversial thing," said James Paretti, a former EEOC attorney who's now with Littler Mendelson. Management-side attorneys have consistently said that the burden required to collect the data outweighed the utility of the information.

"I don't think the information gathered will help the agency enforce pay discrimination laws, because it simply is not useful in doing so," Paretti said. "It was the wrong tool for the job."

National Women's Law Center Legal Director Sunu Chandy disagreed, saying that stakeholders, including the agency, the courts, and advocates, have deemed the information important to collect.

"Through years of study and expert analysis, a decision was made that requiring large employers to provide this information would be for the good," Chandy said.

In fact, not having the data makes it more challenging for stakeholders to do their jobs, she said.

"This will mean that the EEOC or other agencies that have access to this information will be less effective in seeking out pay discrimination trends, violations, or to think about what cases to bring," she said. "This process could have moved the ball forward on more transparency and more equality in the workforce."

Marc Freedman, the vice president of employment policy at the U.S. Chamber of Commerce, said the organization is "gratified" that the EEOC has decided to revisit the pay data collection plan.

Employers and business organizations had warned the agency the process would cost both parties more than the EEOC had first estimated, he said.

This was a "significant miscalculation" on the agency's part, he said.

Democrats Weigh In

The EEOC's decision immediately received condemnation from Sen. Patty Murray (D-Wash.), who has worked to end pay discrimination. She demanded the EEOC reverse its decision.

Dhillon is scheduled to appear at a Sept. 19 House Education and Labor Committee oversight hearing, according to a committee aide. The agency's decision on the pay data collection will be a subject of the hearing.

"President Trump's appointees are using an agency charged with protecting workers' rights to protect companies instead and help them sweep pay discrimination under the rug," said Murray, the ranking member of the Senate Health, Education, Labor, and Pensions Committee. "We need to address the wage gap that leaves so many women and people of color being paid less for doing the same work as others, and let me be clear: You don't solve problems by hiding them and you don't fight for workers by shielding corporations from accountability."

Rep. Rosa DeLauro (D-Conn.) also criticized the agency's move.

"Our federal agencies need to actively engage and crack down on bad actors, not stand on the sidelines while women and people of color get paid less for the same work," she said in a statement provided to Bloomberg Law.

—Ben Penn contributed to this story

To contact the reporters on this story: Paige Smith in Washington at psmith@bloomberglaw.com; Jaclyn Diaz in Washington at jdiaz@bloomberglaw.com

To contact the editors responsible for this story: Jay-Anne B. Casuga at jcasuga@bloomberglaw.com; Martha Mueller Neff at mmuellerneff@bloomberglaw.com

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