



MICHAEL SCHEWE

**For More Information  
Please Contact**

Michael Schewe  
mschewe@pecklaw.com  
201.343.3434

## Medium to Large Employers Must Provide Pay Data by September 30

*A recent court ruling affecting most mid-sized and large employers requires them to submit pay data related to diversity statistics by September 30. As a result, it is imperative that employers start compiling the necessary information, referred to as EEO-1 Component 2 requirements. Although there is the possibility of an appeal, employers should prepare to submit what can amount to a large amount of data over the next few months.*

On April 25, 2019, U.S. District Judge Tanya Chutkan accepted the government's proposal to allow mid-sized and large employers until September 30, 2019, to provide the Equal Employment Opportunity Commission ("EEOC") with data showing how much they paid workers of different genders, races and ethnicities last year. This additional data collection has been dubbed "Component 2" to the existing EEO-1 reporting requirements (which are now referred to as "Component 1"). Component 1 data (i.e., race/ethnicity, gender and job category) is not affected by this ruling, and must be filed with the EEOC by May 31, 2019.

In 2016 the EEOC proposed expanding the EEO-1 data collection to include the Component 2 pay data and hours worked. In August 2017, the Office of Management and Budget ("OMB") wrote EEOC acting Chair Victoria Lipnic to say the rule was paused, or "stayed," pending review. The OMB cited the Paperwork Reduction Act (which directs federal agencies not to overload businesses with paperwork) in support of the stay. In response, the National Women's Law Center and Labor Council for Latin American Advancement sued, alleging that OMB violated the Administrative Procedure Act ("APA"). On March 4, 2019, Judge Chutkan granted summary judgment against the government, overturned the stay she found to be "arbitrary and capricious," and directed the agencies to comply with the 2016 rule change.

The government, however, has been dragging its feet in response to the summary judgment decision. The EEOC claims it does not have appropriate infrastructure in place to accept and secure the pay data. Business groups, including the U.S. Chamber of Commerce, also protested, saying their members would need at least 18 months to complete the new survey requirement.

In setting the September 30 deadline, Judge Chutkan chided the government for not being prepared, and said the government's actions show it "is not committed to a prompt collection of Component 2 information." She directed the EEOC to publish a notice on its website and the Federal Register by April 29 and stipulated that the EEOC "will have to collect a second year of data," but may choose "between 2017 or 2019 calendar year data" by May 3, 2019. On May 2 the EEOC decided it would collect 2017 data, meaning that information must be included in an employer's September 30 filing. The EEOC also announced that it would open an online collection portal by July 15 for employers to submit their pay data and said it would offer a series of training sessions to help employers comply with the new requirements.



## CLIENT ALERT

The EEO-1 reporting rules apply to employers with 100 or more employees, and federal contractors with 50 or more employees. Covered employers must now scramble to update their human resources information systems to meet this deadline. While there's a chance the date could be put on hold through the filing of an appeal, prudent employers will want to begin preparations for September 30 regardless.

Employers have expressed concern about how the government will use this pay data. Especially given New Jersey's recent Equal Pay amendments, now is an excellent time for New Jersey employers to undertake an Equal Pay audit to determine whether any pay disparities exist and, if necessary, take corrective action to address them.

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