

EEO-1 Employers Alert

By: Julie Pugh on March 5, 2019 on graydon.law

Yesterday, March 4, 2019, a federal D.C. Circuit judge ordered the EEOC's pay data collection initiative to be reinstated. As a refresher, generally all private employers with more than 100 employees and all federal contractors (with 50 or more employees and a contract with the federal government worth more than \$50,000) are required by law to file a compliance survey disclosing the company's locations, employees, and employment data. To comply with the employment data requirement, employers must disclose the gender, race, and ethnicity information by job category for all full time and part-time employees employed during the selected payroll period.

In 2016, the EEOC sought to add a new component to the EEO-1 report that required employers to disclose how much workers earn. In August 2017, the Office of Management and Budget ("OMB"), which had previously approved this addition, hit the pause button pending further review of the administrative burden on employers. In November 2017, a private group sued the OMB alleging it had overstepped its authority. Yesterday, Judge Tanya Chutkan agreed with the plaintiffs and ordered that the OMB's stay on the pay data collection initiative be lifted.

As of today, the EEOC's website states that it will reopen the 2018 EEO-1 survey on March 18, 2019. The deadline to submit 2018 EEO-1 data is currently May 31, 2019. As this is a developing story, several questions remain unanswered: (1) will employers be required to submit 2018 pay data? (2) will the government appeal the district court's decision? (3) will this decision require further delay of EEO-1 reporting? (4) is there a more effective, less litigious way to close the wage gap?

Stay tuned, as we will continue to follow this story and update based on employer requirements as they are announced.