

Blog Post

EEO-1 Pay Data Collection Form Nixed for Now

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Employers that have been struggling with whether to undertake the arduous task of assembling the 2017 pay data required by the new EEO-1 form can breathe a sigh of relief: the Office of Management and Budget (OMB) has nixed it for now.

Acting EEOC Chair Victoria Lipnic announced on August 29 that the OMB advised that it is initiating a “review and immediate stay” of the pay data collection portion of the form, approved by the EEOC last September. The new form would have required employers with 100 or more employees to file not just the standard information required by the prior EEO-1 form — information about employees’ race, ethnicity, and sex in each of 10 job categories – but also to file detailed wage and hour information reflecting W-2 earnings and hours worked for all employees categorized in each of 12 pay bands.

Now, employers with 100 or more employees and federal contractors or subcontractors with 50 or more employees can continue to use the old EEO-1 form.

Acting Chair Lipnic had voted against the pay data reporting requirement. As she noted on Akerman’s “Workedup” podcast, “I voted against it because I think it’s not the right policy tool to correct for what we are trying to correct for.” She noted that employers and federal contractors told her the new

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form would not accomplish what it was intended to accomplish.

Indeed, employers have objected from the outset. The U.S. Chamber of Commerce urged OMB to reject the revised form, arguing that the EEOC “grossly understated” the burden associated with complying, with no accompanying benefit. The Chamber estimated that employers would spend more than eight million hours complying with reporting requirements at a cost of more than \$400 million. Further, the Chamber noted that the EEOC “failed to identify any significant or tangible benefit” the revised EEO-1 report would generate.

In addition to the cost, the form was flawed, categorizing employees in occupational groups that result in comparing employees in completely different jobs, who perform completely different tasks that require completely different skills. For example, lawyers, doctors, accountants, nurses, and dieticians would all be grouped as “professionals.” Yet somehow this data was supposed to show pay disparities based on gender, race, or ethnicity. However, even the EEOC had conceded in its Final Revisions to the form that it “does not intend or expect that this data will identify specific, similarly situated comparators or that it will establish pay discrimination as a legal matter.”

Other objections included that the data being collected was highly sensitive and yet there were no provisions to ensure its privacy or confidentiality would be protected.

In issuing the stay, the OMB noted that it is concerned that “some aspects of the revised collection of information lack practical utility, are unnecessarily burdensome and do not adequately address privacy and confidentiality issues.”

The stay may just be a stop along the way to the revised EEO-1 form’s final demise. While Acting Chair Lipnic is the sole Republican on the EEOC, two

other Republicans have been nominated to the five-member commission, including Janet Dhillon to serve as Chair. If both are confirmed, there will be a Republican majority. At that point, it seems likely the commission will vote to rescind the new EEO-1 and seek other means of pursuing pay equity issues.

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