



News & Updates

EEO-1 PAY DATA RULE BACK IN EFFECT, STAY LIFTED

On March 4, 2019, Judge Tanya Chutkan of the U.S. District Court, District of Columbia, ruled that the White House Office of Management and Budget (OMB) must lift a stay it imposed in August 2017 that prevented a new rule from going into effect requiring employers to report additional information regarding employee pay data. Specifically, the court vacated the OMB's stay of the implementation of the Equal Employment Opportunity Commission's (EEOC) revised Employer Information Report EEO-1 (EEO-1) form.

The case, *National Women's Law Center, et al. v. Office of Management and Budget*, was brought by two organizations: National Women's Law Center (NWLC) and Labor Council for Latin American Advancement (LCLAA). NWLC is a nonprofit organization that advocates for the rights of women and girls. LCLAA represents the interests of Latino/a trade unionists throughout the United States and Puerto Rico, as well as other non-unionized Latino/a workers. Both organizations advocate for closing the race and gender pay gaps.

Prior to the new EEO-1 form, the EEOC required that employers with one hundred or more employees file with the EEOC and EEO-1 form requiring employers to report the number of individuals employed by job category, sex, race, and ethnicity. In September 2016, the OMB approved a new collection of data on employees' W-2 earnings and hours worked, which EEO-1 filers maintained in the ordinary course of business. The new collection of pay data was supposed to begin with the 2017 reporting cycle, and EEO-1 filers were supposed to submit their reports by March 31, 2018. On August 29, 2017, it was announced that the OMB had decided to initiate a review of the new requirements and stay the implementation of the new reporting requirements.

The plaintiffs NWLC and LCLAA then commenced suit seeking to vacate the stay. They argued in *National Women's Law Center, et al. v. Office of Management and Budget*, that the OMB violated the Paperwork Reduction Act (PRA) and the Administrative Procedure Act (APA), among other things, and exceeded their authority in reviewing and staying the collection of the new data. The court agreed.

According to the court's decision, the OMB may review a previously approved collection of information only when "relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error" [*Natl. Women's Law Ctr. v. Off. of Mgt. and Budget*, 17-CV-2458 (TSC), 2019 WL 1025867, at *14-15 (D.D.C. Mar. 4, 2019) (quoting 5 C.F.R. § 1320.10(f))]. If either requirement is met, OMB may stay a prior approval of a collection of information not contained in a rule, but only for "good cause" shown and "after consultation with the agency" (*Id.*). Here, the court concluded that OMB had not shown that a relevant circumstance had changed or that the burden estimate provided was materially in error. Moreover, it had not shown good cause (*Id.*). The court also rejected numerous arguments advanced by the OMB as to why the plaintiffs allegedly had no standing to sue or have not demonstrated causation or redressability.

As for when the new EEO-1 report is now due, the EEOC had recently extended the deadline for employers to submit this year's EEO-1 data from its usual late March date to May 31, 2019 due to the government shutdown, though it is possible the deadline might change again.

For more information on this decision and how it might affect your business, please contact:

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