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EEO-1 “Part 2” Pay Data Report Roars Back to Life

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In a stinging rebuke of the Trump Administration’s attempt to remove burdensome regulations on employers, Judge Tanya Chutkan, a District Court judge in the District of Columbia this week reinstated the EEO-1 “Part 2” wage data/hours worked reporting form for all employers who file annual EEO-1 demographic reports with the Equal Employment Opportunity Commission (“EEOC”) and the U.S. Department of Labor. (This includes all companies employing more than 100 people, or 50 people if they are a US federal contractor.)

This new data collection requirement, launched in 2016 by the Obama Administration EEOC, and strongly opposed by employers and employer advocacy groups such as the U.S. Chamber of Commerce, will require employers to provide aggregated pay data and a summary of hours worked in 12 defined pay bands for each of 10 EEO-1 job and 14 gender race and ethnicity categories. This first-of-its-kind data compilation will require merging information from both HR and payroll systems—not an easy task. This was one of the burden arguments raised by the employer community along with the limited usefulness of the data and the challenge of merging the data accurately to fit the new pay bands.

The EEO-1 Part 2 requirements were promulgated by the EEOC through the normal administrative process and were approved by the Obama Administration’s Office of Management and Budget (“OMB”), the gatekeeper for all federal regulation. The Part 2 form was on the cusp of being implemented when the Trump Administration OMB announced in August 2017 it would review and stay the process. OMB stated it would revisit the burden arguments raised by employers, but provided scant analysis or explanation for the renewed effort.

Two advocacy groups, the National Women’s Law Center, a Washington D.C. based group, and the Labor Counsel for Latin American Advancement, sued OMB and the EEOC to reinstate the data collection requirement. In its ruling this week, the Court chided the Administration for failing to provide any factual or legal support for staying the previously authorized form and ruled the stay illegal. It also opined that overturning the stay would not be disruptive to the employer community since employers were on notice in 2017 and were aware that the stay could be lifted at any time!

Interestingly, the Court found that the plaintiffs would be harmed financially without access to the new data. The plaintiffs’ argument was simple, the promised data would aid their missions of advancing gender and ethnic equal pay initiatives. Without the pay data, they would have to spend their own resources compiling the data themselves. This was sufficient justification for the Court, but could set

a dangerous precedent for advocacy groups to use against the government in the future.

The EEO-1 filing deadline this year is May 31–only 12 weeks away. It is unclear if the EEOC will require employers to submit Part 2 data or set a new schedule for submission. We will be following the issue closely, but it would be prudent to review any processes built for this data collection and review your data for accuracy.

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