

Office of Management and Budget Halts Employers' Obligation to Report Summary Pay Data on Annual EEO-1 Form

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The Office of Management and Budget (OMB) has issued an immediate stay of requirements for certain private employers to report data on pay and work hours to the U.S. Equal Employment Opportunity Commission (EEOC). The OMB's action on August 29 comes nearly a year after the EEOC finalized a rule requiring larger employers to provide pay data on the annual Employer Information Report (EEO-1) starting with the 2017 EEO-1 due March 31, 2018.

The EEOC revised the EEO-1 on September 29, 2016, requiring private employers with more than 100 employees and federal contractors with more than 50 employees to provide a summary of employee pay data based on W-2 earnings, as well as hours worked. This would be in addition to data on race, ethnicity, and gender by occupational category already required on the previously approved EEO-1. The EEOC's intent in collecting pay data is, among other purposes, to assess complaints of discrimination, focus agency investigations, and identify existing pay disparities that may warrant further examination.

The OMB relied on its authority under the Paperwork Reduction Act (PRA) to immediately stay the new requirements pending OMB review. The agency believes collecting the additional information is contrary to the standards of the PRA, which serves to reduce, minimize, and control burdens on the public involving information created, collected, maintained, and distributed for the federal government.

According to a memo dated August 29, 2017, from Neomi Rao, Administrator, Office of Information and Regulatory Affairs, the OMB is concerned that some aspects of the pay data collection "lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues." As a result, under PRA regulations, the EEOC is required to submit a new information-collection package to the OMB for review. Based on Administrator Rao's memo to the EEOC, it can be expected that the EEOC's information-collection package will include data file specifications for employers to use in submitting EEO-1 data. Specifications were not contained in

the original Federal Register notices as part of the public comment process, nor were they outlined in the supporting statement. Thus, according to the OMB, the public did not have an opportunity to provide comment on the method of data submission to the EEOC.

EEOC Acting Chair Victoria A. Lipnic issued a statement emphasizing that the "EEOC remains committed to strong enforcement of our federal equal pay laws," and that the OMB's decision "will not alter EEOC's enforcement efforts." Acting Chair Lipnic further stated that she hopes the decision "will prompt a discussion of other more effective solutions to encourage employers to review their compensation practices to ensure equal pay and close the wage gap."

According to a [notification](#) posted on the EEOC's website, the March 31, 2018, filing deadline for Fiscal Year 2017 EEO-1 reporting requirements remains unchanged. However, employers should use the previously approved form, which only requires data on race, ethnicity, and gender.

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