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More Good News for Employers: White House Blocks EEO-1 Pay Reporting Requirements

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Another Obama-administration employment initiative has been stayed. On August 29, 2017, the Office of Management and Budget (OMB) issued a stay of the EEO-1 pay data collection requirements. And, just in the nick of time as the reporting period that was to be used as the EEO-1's "snapshot" period was just a few weeks away (one pay period during the three-month period from 10/1/17 to 12/31/17).

Background: The Proposed EEO-1 Pay Reporting Requirements

The proposed EEO-1 report added compensation and hours-worked components to the annual EEO-1 submission. It created new requirements to submit compensation data by gender, race, and ethnicity, including a requirement to report hours worked by employees in 10 job categories divided by 12 pay bands per category (ranging from \$19,239 to \$208,000 and over).

The Equal Employment Opportunity Commission's (EEOC) position was that this was being required as a way to combat pay discrimination. The EEOC planned to publish aggregated EEO-1 data and industry reports because, it stated, that such reports would provide useful comparative data and would allow companies to conduct voluntary self-assessments, remedy pay disparities and comply with equal pay laws. The defense bar and other employer advocates raised issues about privacy and confidentiality concerns and expressed concern that this data would be taken out of context and could result in frivolous litigation.

The OMB's Stay

The August 29, 2017 memorandum to the EEOC stated that the OMB was "initiating a review and immediate stay of the effectiveness of the new aspects of the EEO-1." Newly confirmed Administrator Neomi Rao described three reasons for this

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decision as follows:

- First, relevant circumstances related to the collection of data had changed since the form was previously approved (under the Obama Administration). Specifically, the EEOC identified the data file specifications for employers but those specifications were not published in the Federal Register. As a result, the public did not receive an opportunity to provide comment on the method of data submission to EEOC.
- Second, the Administrator stated that the EEOC failed to account for these new data file specifications in its burden estimates and recognized that these new specifications may have affected the EEOC's initial burden estimate on employers.
- Third, the Administrator voiced concerns with the revised EEO-1 form itself. Specifically, the Administrator stated 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 EEOC's Response to the Stay

In response to the memorandum, Acting Chair Lipnic said that "The EEOC remains committed to strong enforcement of our federal equal pay laws, a position I have long advocated. Today's decision will not alter EEOC's enforcement efforts ... I do hope that this 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."

What's Next

This does not mean that employers have no reporting obligations. The previously approved EEO-1 form, which collects data on race, ethnicity, and gender by occupational category, will remain in effect. Employers should plan to submit the earlier approved EEO-1 form by the revised filing date of March 31, 2018.

Even though employers are not required to collect and report the pay data (at least for now), employers still must comply with federal, state and local laws regarding pay equity. Employers should continue to engage in self-assessments (protected by attorney-client privilege where possible) to ensure their pay practices comply with federal, state and local requirements.

Rebecca Davies

313.225.7028

davies@butzel.com