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Labor and Employment Alert: The EEOC's Revised EEO-1 Gets Tossed by the Office of Management and Budget

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On August 29, 2017, the Office of Management and Budget (OMB) immediately halted the EEOC's revisions to the EEO-1 form that were to take effect in March 2018. The revisions to the EEO-1 form would have included new requests for data on the wages and hours worked from employers with 100 or more employees and from federal contractors with 50 or more employees. OMB has broad authority to review executive agency rulemaking and used that authority to "initiat[e] a review and immediate stay of the effectiveness" of the revised EEO-1 form.

OMB determined that the specifications the EEOC has released to employers for use in submitting the revised EEO-1 form had not been submitted for public comment during the rule-making process. Nor did the EEOC's estimates of the burdens imposed on employers by its new data collection requirements account for the data file specifications. OMB believes that "continued collection of this information is contrary to the standards of the [Paperwork Reduction Act]." Notably, "OMB 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."

Given OMB's action, covered employers do not have to report the wages and hours worked of their employees. However, those employers are still required to comply with the original EEO-1 form's reporting requirements concerning sex, race, and ethnicity. Contact your Vorys lawyer if you have questions about the EEO-1 or potential pay disparity or discrimination.