

Employers beware; EEO-1 reporting obligations in flux

A federal court ruling on Monday, March 4, has the potential to significantly impact larger employers' annual EEO reporting obligations.

EEO-1 reporting obligations

Under the federal Civil Rights Act, employers with 100 or more workers (and federal contractors with 50 or more workers) are required to file annual reports with the Equal Employment Opportunity Commission detailing the number of individuals employed by job category, sex, race, and ethnicity; the annual "EEO-1" form.

In 2016, the Obama administration revised the reporting process to add a requirement that employers include pay data in their annual reports. The overall purpose of gathering raw compensation data was to "improve enforcement of federal laws prohibiting pay discrimination."

The revised reporting process was to go into effect with EEO-1 forms due March 31, 2018. But the Trump administration suspended the revised process and form in 2017.

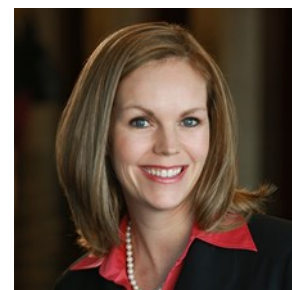
The suspension prompted a lawsuit filed by various pay equity advocates. The plaintiffs argued that the process by which the administration issued its suspension violated the federal Administrative Procedure Act and the federal Paperwork Reduction Act.

In a ruling issued on March 4, the federal court agreed with the plaintiffs. The court concluded that the Trump administration's suspension of the revised EEO-1 form "was illegal," and that its "deficiencies were substantial." Under



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those circumstances, the court vacated the administration's suspension of the revised form and ordered that "the revised EEO-1 form shall be in effect."

The Trump administration might appeal Monday's ruling; the appeal deadline is pending. If the administration does appeal, it also might ask the court to stay its own ruling pending the outcome of that appeal. The administration also might try to go back to its own starting point and use the correct procedure to suspend the use of the revised form.

But until further notice, the EEO-1 reporting process as revised in 2016, including the reporting of pay data, remains in effect.

Recommendation

The current deadline to file EEO-1 forms for the 2018 year is May 31, 2019. In light of Monday's ruling, covered employers preparing to meet that deadline need to be ready to include pay data in their EEO-1 reports.

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We encourage employers who have specific questions about their EEO reporting obligations (or any employment law topics) to contact any of the members of Gallagher & Kennedy's Employment & Labor Law practice.