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Labor and Employment Alert: Employers to Have Until September 30 to Submit Pay Data to the EEOC

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On April 25, 2019, the United States District Court for the District of Columbia accepted a proposal from the EEOC that will require employers who are covered by the EEO-1 reporting requirements to submit supplemental data on employees' pay segmented by sex, race, and ethnicity by September 30. The Court also imposed additional obligations on the EEOC. The EEOC must now collect a second year of pay data and provide the Court with compliance updates every three weeks.

The EEOC originally agreed to revise the EEO-1 form to include this new reporting requirement (called "Component 2" of the EEO-1 report) in September 2016. Although the federal Office of Management and Budget (OMB) initially approved the revision in 2016, it then delayed the revision in August 2017. According to the OMB, the update was going to be "unnecessarily burdensome," so it issued an immediate and indefinite stay. Several advocacy groups sued suit shortly thereafter to obtain a court order that would re-institute the Component 2 requirements.

On March 4, 2019, the Court vacated the stay of the revised EEO-1 form and stated that "the previous approval of the revised EEO-1 form shall be in effect." This ruling appeared to catch the EEOC off-guard, however, as it notified the court that it did not have the technological infrastructure in place to be able to collect this data by the due date for the other EEO-1 information. The EEOC notified the Court of this, and proposed a compromise of September 30 to collect the Component 2 information. Importantly, the EEOC's proposal did not delay the deadline for traditional EEO-1 data from 2018 (called "Component 1"). Employers must still submit this data by May 31, 2019.

Although the Court accepted this September 30 deadline, it went further than the EEOC's proposal. The Component 2 requirements, as they were originally designed, would have sunset on September 30, 2019. The Court therefore ordered the EEOC to collect a second year of pay data, so the EEOC will now have to collect the Component 2 information for 2017 by September 30, 2019, as well. Component 2 data

collection will begin in mid-July 2019. According to the EEOC, it will announce a specific date "as soon as it is available."

Questions remain as to how employer will actually be able to submit their data. Despite the Court chastising the EEOC for not restoring a page on its website telling employers how to submit their pay data, it did not explicitly order the Commission to restore it.

Contact your Vorys lawyer if you have questions about the new Component 2 requirements or the impact it may have on your current EEO-1 reporting.