

EEOC Reports Seeking Employer Pay Data Stayed

August 30, 2017 | Client Update | 2-minute read

New EEOC regulations seeking pay data will not go into effect in March 2018 as planned. According to the EEOC, the Office of Management and Budget (OMB) informed the Commission that it is initiating a review and instituting an immediate stay of the effectiveness of the pay data collection aspects of the revised form that was adopted in September 2016, in accordance with its authority under the Paperwork Reduction Act (PRA).

While the acting chair of the EEOC had opposed the revised form at the time it was approved, the EEOC reportedly lacked sufficient votes to reverse course. Some groups had asked congressional lawmakers to pass laws to prohibit the EEOC from enforcing the rule. The Chamber of Commerce approached the OMB in February 2017, [arguing that the EEOC](#) had severely understated the cost necessary to comply with the regulation, failed to sufficiently prove that the information would provide tangible benefits and ignored concerns regarding confidentiality and privacy.

The Chamber noted that OMB action was vital because the EEOC determined that its revised form would be examined under the PRA, which does not provide the public with the right to petition a federal court to review the agency's action. The letter urged the OMB to review its approval, which it is permitted to do in the case of changed circumstances or when the burden estimates provided by the agency at the time of initial submission were materially in error.

The regulations adopted would have expanded the EEOC's employer information report. The current report collects data about race, gender and job category. The revised form would have also required information about the number of workers within specified pay grades and included private employers such as federal contractors and subcontractors, with 100 or more employees. It was expected to cover 60,000 employers and 63 million employees.

The goal of the regulation was to target pay discrimination. The then EEOC chair stated that discrimination around pay is difficult to detect due to lack of information, and the data would also help with investigations around discrimination. Some commissioners suggested that merely requiring companies to collect the information could cause companies themselves to combat any found pay inequity, as companies may not be fully aware of the existence of such pay gaps.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.