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# Meridian Client Update

## **Federal Court Reinstates Employee Pay Data Reporting Requirement** In an unexpected ruling, a federal court recently ordered the Trump administration to reinstate an Obama-era rule that will require employers to report pay data by employee gender, race and ethnicity.

Absent a reversal on appeal, the court ruling means that covered employers will be required to report this pay data to the Equal Employment Opportunity Commission (EEOC) on revised Form EEO-1 by September 30, 2019.

### **Revised EEO-1 Disclosure Requirements**

Currently, private sector employers with 100 or more employees and federal contractors with 50 or more employees are required each year to submit to the EEOC the number of individuals employed by job category and by race, ethnicity and gender (but without any pay data). On February 1, 2016, the EEOC issued a Federal Register notice to revise EEO-1 reporting requirements to include:

- The number of individuals employed by job category and by race, ethnicity and gender across 12 pay bands (based on W-2 income), and
- The total number of hours worked by the employees counted in each pay band for the reporting year, by their ethnicity, race and gender.

As discussed in our Client Updates dated July 28, 2016 and September 5, 2017, the EEOC under the Obama administration believed that the reporting of such pay data would assist it and other federal agencies in identifying possible pay discrimination and assist employers in promoting equal pay in their workplaces. However, the Office of Management and Budget (OMB) under the Trump administration stayed reporting of pay data due to concerns that “some aspects of the revised collection of information lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues.” In response to the OMB’s stay, on November 15, 2017, the National Women’s Law Center (NWLC) filed a lawsuit against the OMB and the EEOC seeking to reinstate the revised reporting requirements and a declaration that the OMB exceeded its statutory authority in staying the collection of pay data.

### **Court Ruling on OMB Stay of Pay Reporting Requirement**

On March 4, 2019, Judge Chutkan of the U.S. District Court for the District of Columbia held in favor of the NWLC and lifted the OMB’s stay on employer reporting on pay data. The court found that the OMB did not assert a proper justification to halt a measure that it previously approved, and that the decision was “arbitrary and capricious” and exceeded the OMB’s administrative authority. Therefore, the court lifted the OMB’s stay, reinstated the pay data requirement and ordered the EEOC to require employers to submit revised Form EEO-1, which included pay data information.

### **Extension of Compliance Deadline**

Initially, the court ruling created uncertainty among employers about whether they would have to comply with the reinstated wage data requirement by the next EEOC annual reporting deadline, May 31, 2019. However, in April, the EEOC extended the annual reporting deadline to September 30, 2019.

**Meridian Comments.** On May 3, 2019, the Department of Justice appealed the ruling. However, the appeal does not stay the district court orders or alter an employer's obligations to submit the pay data. As such, the EEOC advises employers to prepare to report pay data for calendar years 2017 and 2018 by September 30, 2019.

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