

August 30, 2017

## **New EEO-1 Form Submission Stayed Indefinitely: Employers to File Prior EEO-1 Form in March 2018**

Employers now have good news and guidance on when the next EEO-1 filing is due and what information will be required. The implementation of the new EEO-1 form (which would have required employers to submit compensation data and hours worked) scheduled for March 31, 2018, has been stayed indefinitely. On Tuesday, August 29, 2017, the Office of Information and Regulatory Affairs of the Office of Management of Budget (OMB) issued a memorandum to Acting Equal Employment Opportunity Commission (EEOC) Chair Victoria Lipnic, informing the EEOC of the OMB's decision to initiate a review of the effectiveness of the new EEO-1 form's requirements for reporting hours worked and compensation data and an immediate stay on its implementation pending the review. The EEOC immediately followed with a public statement acknowledging OMB's decision and informing employers that they will need to file the old EEO-1 form by the March 31, 2018 deadline. Additionally, the new EEO-1 form stay does not impact the VETS-4212 form; covered government contractors will still need to file the VETS-4212 form by September 30, 2017.

The OMB issued the stay under the Paperwork Reduction Act (PRA), in part because it found EEOC's original burden estimates to be "materially in error" and in part for "good cause." In support of its good cause conclusion, OMB echoed the lack of usefulness, burden, and confidentiality concerns raised by employers:

OMB has also decided to stay immediately the effectiveness of the revised aspects of the EEO-1 form for good cause, as we believe that continued collection of this information is contrary to the standards of the PRA. Among the other things, OMB is concerned that some aspects of the revised collection of information lack practical utility are unnecessarily burdensome, and do not adequately privacy and confidentiality issues.

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The revised EEO-1 form issued on September 29, 2016, would have required employers with 100 or more employees and federal contractors with 50 or more employees to report hours worked and compensation data by salary band, in addition to the data on race/ethnicity and gender already required by the prior version of the form. The U.S. Chamber of Commerce, as well as other groups, filed objections to the new EEO-1 form with OMB under the PRA asserting that the burden estimates provided by the EEOC at the time of the initial submission were substantially under reported.

Yesterday's OMB memo to EEOC also explains that in order to work toward approval of the new EEO-1 form, the EEOC will have to submit a new information collection package to OMB for review. The EEOC must also publish a notice in the federal register announcing the immediate stay and confirming that the businesses may use the previously approved EEO-1 form in order to comply with their reporting obligations for 2017 (for which the deadline will be March 31, 2018).

Given that EEOC Acting Chair Lipnic has previously expressed many of the concerns raised by both the Chamber and the OMB and was the only commissioner to vote against the new EEO-1 form, it is questionable whether the EEOC will continue with a similar form. That said, since becoming Acting Chair, Lipnic has made several statements confirming her commitment to the enforcement of federal equal pay laws, leaving open at least the possibility that she could support some sort of reporting of compensation.

## **Related People**

### **Farrah Rifelj**

Partner

[fnwrifelj@michaelbest.com](mailto:fnwrifelj@michaelbest.com)

T 608.283.0110

### **Marion Smith**

Director of Employment Relations and Compliance

[mcsmith@michaelbest.com](mailto:mcsmith@michaelbest.com)

T 414.225.2760

### **Maryelena Zaccardelli**

Senior Director of Affirmative Action Plans & Contractor Compliance

[mezaccardelli@michaelbest.com](mailto:mezaccardelli@michaelbest.com)

T 202.747.9567