

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL WOMEN’S LAW CENTER,
et al.,

Plaintiffs,

vs.

OFFICE OF MANAGEMENT AND
BUDGET, *et al.*,

Defendants.

Civil Action No. 17-2458 (TSC)

PLAINTIFFS’ REQUEST FOR A STATUS CONFERENCE

Plaintiffs respectfully request that the Court convene a status conference in this matter to discuss Defendants’ compliance with the Court’s Memorandum Opinion and Order of March 4, 2019 (hereafter, collectively “Order”).¹

As the Court is aware, it entered summary judgment in Plaintiffs’ favor on March 4, 2019, and issued an Order stating that: “OMB’s stay of EEOC’s revised EEO-1 form and the September 15, 2017 Federal Register Notice (Stay the Effectiveness of the EEO-1 Pay Data Collection, 82 Fed. Reg. 43362) announcing the same are VACATED.” Dkt. No. 46. The Memorandum Opinion accompanying this Order also stated that “It is further ORDERED that the previous approval of the revised EEO-1 form shall be in effect.” Dkt. No. 45.

¹ Plaintiffs conferred with Defendants as required by Local Civil Rule 7(m) regarding this request. Defendants’ position is that “Defendants are working diligently to comply with the Court’s recent order and therefore believe that Plaintiffs’ request for a status conference is unnecessary at this time.”

Defendant EEOC previously had announced that the reporting period for the 2018 EEO-1 Report would open in early March, later refining the date to March 18, 2019.² Since the Court issued its Order, Plaintiffs have requested information about Defendants' plans for compliance from Defendants' counsel. Defendants have declined to provide any specific information. *See* Att. A. On Saturday March 16, 2019, Defendants' counsel emailed Plaintiffs' counsel stating that:

EEOC has informed us that it intends to post the following notice on its website either tomorrow evening or early Monday morning: "As it announced at the end of January, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 Component 1 data starting March 18, 2019 and ending May 31, 2019. The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of Component 2 EEO-1 pay data. The EEOC will provide further information as soon as possible."

See Att. B.

On March 18, 2019, the EEOC opened the 2018 EEO-1 Survey for employer reporting.³ The EEOC also issued the following statement:

Statement on the 2018 EEO-1 Portal Opening for Component 1 Data

As it announced on February 1, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 **Component 1 data** starting March 18, 2019, and ending May 31, 2019. Instructions for filing are available here: <https://www.eeoc.gov/employers/eeo1survey/index.cfm>.

The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of

² EEOC, Press Release, "EEO-1 Survey for 2018 Will Open Early March 2019" (Feb. 1, 2019), <https://www.eeoc.gov/eeoc/newsroom/release/2-1-19.cfm>.

³ EEOC, "2018 EEO-1 Survey", <https://www.eeoc.gov/employers/eeo1survey/>.

Component 2 EEO-1 pay data. The EEOC will provide further information as soon as possible.⁴

In short, EEOC has opened the 2018 EEO-1 reporting period only as to Component 1 data, not as to the Component 2 pay data that is the subject of the instant litigation and the Court's Order. Both before and after this action, Plaintiffs have requested information about EEOC's timeframe for compliance and plans for alerting the reporting community to the obligation to submit Component 2 pay data, but Defendants' counsel has not provided any information beyond the content of the notice. *See* Atts. A, B.

Defendants' delay in complying with the Court's order, and inability or unwillingness to provide any information about their plans to do so, is especially concerning because Defendants previously represented that it would take OMB "1 day" to "get Component 2 'live' should plaintiffs prevail in this case." *See* Att. C. Defendants made this representation while seeking Plaintiffs' consent to extend the summary judgment briefing schedule, in response to Plaintiffs' concerns that further delay could put the collection of 2018 data at risk. Defendant EEOC did not contradict OMB's representation at that time, and Defendants have not explained the inconsistency with their current actions in response to Plaintiffs' recent inquiries.

Accordingly, Defendants are out of compliance with the Court's Order. Moreover, in light of the deadline of May 31, 2019 for employers to submit their EEO-1 reports for 2018, further delay in opening reporting for Component 2 pay data, and the possibility of employers submitting Component 1 data without Component 2 pay data, risks logistical difficulties and gaps in employer compliance. Plaintiffs therefore respectfully request that the Court convene a

⁴ EEOC, "Statement on the 2018 EEO-1 Portal Opening for Component 1 Data", <https://www.eeoc.gov/employers/eeo1survey/statement-2018-opening.cfm> (emphasis in original).

status conference at its earliest possible convenience in order to obtain information regarding Defendants' plan for compliance with the Court's Order and to provide guidance regarding the Court's expectations for compliance.

Dated: March 18, 2019

Respectfully submitted,

/s/ Robin F. Thurston

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