

Federal Court Shoots Down EEOC Subpoena

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Employers facing Equal Employment Opportunity Commission (EEOC) charge investigations may find themselves on the receiving end of overly broad, unduly burdensome and/or irrelevant information requests from the EEOC. If an employer refuses to comply with the requests, the EEOC has the authority to issue a subpoena. However, the agency's subpoena power is not without limitations.

A recent case decided by the Tenth Circuit Court of Appeals (covering Colorado, Kansas, Oklahoma, New Mexico, Wyoming, and Utah) demonstrates the limits of EEOC subpoena power. In that case an EEOC subpoena sought information regarding an employee's charge of disability and pregnancy discrimination. The company refused to comply and the EEOC took the matter to court seeking enforcement of the subpoena.

During the course of its investigation, the EEOC believed it uncovered evidence that the company had a company-wide policy and/or practice of refusing to provide job reassignments as a reasonable accommodation to qualified individuals with disabilities. As a result, the EEOC decided to expand the scope of its investigation and requested a complete list of all employees who requested or were granted accommodations, including employees who had been pregnant, as well as personal identifying information for the employees. The company took the position that the EEOC was engaging in a "fishing expedition," as the information requested was unduly burdensome and not relevant to the single employee's claims.

The court noted the EEOC's authority to obtain information, including via subpoena, relating to unlawful employment practices and relevant to the charge under investigation. However, the court declined to enforce the specific subpoena at issue, stating that the EEOC failed to allege anything to suggest a pattern or practice of discrimination, or explain how the request for pregnancy information of other employees was relevant to the charge. Although this particular court refused to enforce the EEOC's subpoena, cooperating with the EEOC should generally be an employer's presumed course of action. The information requested may even support the employer's position. However, if the EEOC's requests for information are excessive, unduly burdensome and/or irrelevant, employers may want to consider trying to negotiate a compromise with the EEOC in an effort to narrow the scope of the requests. If no compromise can be reached, challenging the EEOC's requests or subpoena in court is a viable option. Of course, given that the cost of a court challenge could exceed the cost of cooperating and providing the requested information, employers should carefully consider their options and consult with counsel in determining how to best respond to an overbroad EEOC

subpoena.

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