

## Seventh Circuit: EEOC May Continue Investigation After Dismissal of Private Lawsuit

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The Seventh Circuit recently concluded that the EEOC's investigative powers do not end when a lawsuit related to the originating charge ends. *EEOC v. Union Pacific*, No. 15-cv-3452 (Aug. 15, 2017).

**Background.** Two former railroad employees alleged race discrimination and retaliation in EEOC charges, asserting that they were not permitted to take an advancement test and were later discharged. In 2012, the EEOC issued a right to sue letter to them. The employees filed suit in the Northern District of Illinois, and the suit was dismissed in July 2014. Despite having issued the right to sue letter and despite the dismissal of the private lawsuit, the EEOC continued its investigation into alleged race discrimination against other employees in the same work unit, and petitioned in September 2014 to enforce a subpoena when the Company had refused to produce documents (because it contended that the EEOC's investigative authority terminated upon the resolution of the underlying charges and lawsuit). The district court granted the EEOC's petition to enforce, and an appeal followed.

**Ruling.** The Seventh Circuit ruled that while the investigative authority is tied to charges filed with the Commission, that authority does not end when the proceedings related to the charges terminate. The court based its holding on "the EEOC's broad role in promoting the public interest by preventing employment discrimination under Title VII, including its independent authority to investigate charges of discrimination." Even though the EEOC had issued right to sue letters years earlier, and a district court granted the Company summary judgment in July 2014, the court found that the EEOC could continue to investigate potential discrimination at the Company through subpoenas which were issued in 2014 and became the subject of the underlying enforcement action. Acknowledging the circuit split as to whether EEOC authority terminates after a right to sue letter is issued, the Seventh Circuit sided with the Ninth Circuit and disagreed with the Fifth Circuit on this issue.

**Implications.** While this decision and the expanding circuit split may entice the U.S. Supreme Court to weigh in on the scope of the EEOC's investigative authority, employers in Illinois, Indiana and Wisconsin should be mindful that (at least for now) the EEOC's investigation of alleged discrimination may not end when proceedings related to an original charge terminate.

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