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SUPREME COURT RULES DISTRICT COURT DECISIONS ABOUT EEOC SUBPOENAS ARE ENTITLED TO DEFERENCE

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The EEOC ("Equal Employment Opportunity Commission") is authorized by Title VII to investigate charges of discrimination filed by an employee or by the EEOC, itself. When investigating, the EEOC is entitled to access "any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered" by Title VII that is "relevant to the charge under investigation." If the employer does not provide the requested information, the EEOC can issue a subpoena. If the employer does not comply with the subpoena, the EEOC can ask a federal district court to enforce the subpoena and order the employer to provide the information.

In this case an employee who was discharged after failing a return-to-work physical evaluation three times following a maternity leave filed a charge of sex (pregnancy) discrimination against her employer. The EEOC expanded its investigation to include all of the employer's locations nationwide and to include older employees to investigate possible age discrimination. The EEOC asked the employer for the age, gender, job title,

names, addresses, telephone numbers, and social security numbers of all employees who had been asked to take the physical evaluation, along with the reason for taking the evaluation and the employees' evaluation score. The employer provided the information anonymously. The EEOC issued a subpoena for the employees' identifying information. The employer declined to provide this information. The EEOC filed suit to enforce its subpoena. The district court declined to enforce the subpoena. It ruled the identifying information was not relevant because an employee's name or even an interview the employee could provide "could not shed light" on whether the evaluation was used for discrimination.

It is not uncommon for the EEOC to request information which exceeds the scope of an individual charge discrimination.

The EEOC appealed. The United States Court of Appeals for the Ninth Circuit reversed. It ruled the identifying information *was* relevant. The employer appealed.

The Supreme Court noted that district courts are well suited to determine both aspects involved in deciding whether to enforce a subpoena: 1) whether the information requested is relevant and 2) whether it is unduly burdensome to provide in light of the circumstances.

- Whether the information is relevant requires a court to evaluate the relationship between the information sought and the matter under investigation.
- Whether producing the information is burdensome turns on the nature of the information sought and the difficulty the employer will face in providing it.

The district courts have discretion to make these decisions on a case-by-case basis. The Court of Appeals should not have made an independent decision regarding relevance. It should have affirmed the district court's decision unless it determined the district court abused its discretion. Because the Ninth Circuit Court had used the wrong standard in reviewing the district court's decision, the Supreme Court vacated the appellate court's

decision and sent the case back to the Ninth Circuit to review the case again using the correct, abuse-of-discretion standard.

This ruling is good news for employers. It is not uncommon for the EEOC to request information which exceeds the scope of an individual charge of discrimination. Employers should have a better chance of convincing a district court judge who is called upon regularly to make these types of decisions, than an appeals court, that the EEOC's request for information is irrelevant, overbroad and/or burdensome. Also, the EEOC will be less likely to appeal an adverse decision at the district court knowing the appellate court's review will be limited to determining whether the district court abused its discretion.

Case: *McLane Co., Inc. v. Equal Emp't Opportunity Comm'n*, No. 15-1248 (S. Ct. Apr. 3, 2017).

About the Author. Karen L. Piper *represents and counsels employers on employment law issues. She has conducted a number of employment investigations and training seminars for a variety of clients and has also successfully defended numerous discrimination and wrongful discharge cases at the administrative, trial, and appellate levels. Karen is a frequent speaker and writer for national and local industry associations.*

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