



# Supreme Court Limits EEOC Subpoena Power

Insights

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In a 7 to 1 decision, the U.S. Supreme Court ruled today that courts of appeals should largely defer to lower courts' decisions when policing subpoenas issued by the Equal Employment Opportunity Commission (EEOC). By requiring that lower court rulings should be reviewed for abuse of discretion, rather than under a *de novo* review standard, the Supreme Court's decision keeps a more sensible, reasonable limit on the EEOC's investigatory powers, including the scope of requests for information in administrative subpoenas.

The ruling is good news for employers, putting the 9th Circuit Court of Appeals in line with rulings of courts in other circuits across the country (*McLane v. EEOC*).

## EEOC Seeks Far-Reaching Investigation Into Discrimination Allegations

Damiana Ochoa worked as a cigarette selector for McLane, a supply chain services company, for approximately eight years. In that role, she was responsible for selecting certain products and placing them in a container to fulfill customer orders. Ochoa went out of work on maternity leave, and upon her return in 2007, McLane required her to pass a physical capabilities evaluation before she could resume her duties. McLane required this evaluation for all new employees and any employee returning from leave in excess of 30 days. Ochoa took the evaluation three times, failing to meet the minimum requirements for her position each time and, as a result, McLane terminated her employment.

In January 2008, Ochoa filed a Charge of Discrimination with the EEOC alleging sex discrimination (based on her pregnancy) in violation of Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA). As with most cases, the EEOC set out to investigate the allegations and contacted the employer to gather information.

In response to the EEOC's request for information, McLane provided information about the evaluation and the individuals who had been required to take it. This included each evaluation taker's gender, job class, reason for taking the evaluation, and score received.

But the EEOC wasn't satisfied; the agency went a significant step further and also requested "pedigree" information, which included the evaluation takers' names, social security numbers, and last known contact information. McLane objected to the EEOC's request for pedigree information, as well as information about when and why evaluation takers had been discharged, claiming that the request was too broad and unduly burdensome.

Eventually, the EEOC expanded the scope of its investigation and sought pedigree information about employees from McLane facilities across the nation (more than 14,000 people). McLane continued to oppose turning over any pedigree information or additional information about evaluation takers who were discharged.

In response, the EEOC issued an administrative subpoena demanding that information. McLane objected to this request, instead petitioning the EEOC to revoke or modify the subpoena. The EEOC refused to back down. When McLane continued to resist compliance, the EEOC filed a subpoena enforcement action in federal district court, claiming it needed the pedigree information to investigate possible discrimination violations against each person who had taken the physical capabilities evaluation

### **Lower Courts Disagree About EEOC's Actions**

The U.S. District Court for the District of Arizona refused to enforce the subpoena to the extent it required McLane to divulge pedigree information. The court determined the EEOC's primary motivation for requesting pedigree information was related to the ADA, but the information was not relevant to determining whether the physical capabilities evaluation was discriminatory based on sex – that is, the information did not tend to prove that unlawful gender discrimination occurred.

The EEOC appealed the trial court's decision to the 9th Circuit Court of Appeals, which reviewed the ruling *de novo* – meaning it took up review of the case “anew” or “from the beginning.” This decision was surprising given that each of the eight other federal appellate circuits addressing subpoena enforcement actions have employed an “abuse-of-discretion” standard, which is much more deferential to the lower court.

The 9th Circuit then reversed the lower court and determined pedigree information was relevant, therefore clearing the EEOC's subpoena for enforcement. The appeals court concluded the request for information met the relevancy standard imposed by Title VII, as it would relate to employment practices made unlawful by Title VII and would be relevant to the charge under investigation. According to the 9th Circuit, the relevancy standard should be applied broadly and encompasses “virtually any material that might cast light on allegations against the employer.” This is a very broad standard.

The court observed that the EEOC's goal at the investigative stage is to determine whether reasonable cause exists “to believe that the charge is true.” Because the EEOC wanted to contact other McLane employees about their experiences with the physical capabilities evaluation, the 9th Circuit held that the pedigree information was within the boundaries of the relevancy standard and subject to an EEOC subpoena. McLane sought final review at the Supreme Court, which issued its decision earlier today.

### **SCOTUS: EEOC Overstepped Its Bounds**

In a majority opinion drafted by Justice Sotomayor, the Supreme Court held that a federal court of appeals should use the “abuse of discretion” standard, and not the *de novo* review standard, when

appeals should use the “abuse of discretion” standard, and not the *de novo* review standard, when reviewing a district court’s ruling on a challenge to an EEOC administrative subpoena action. This decision means that a federal appellate court will generally defer to the trial court’s ruling unless the record reveals that the trial court abused its discretion when making its order.

The Court began its analysis by reviewing longstanding practices of courts of appeals. In doing so, it determined that appellate courts have generally applied the abuse-of-discretion standard in reviewing trial courts’ decisions to enforce or quash administrative subpoenas. The Court also noted that nearly all courts of appeals apply the same standard. The only outlier has been the 9th Circuit, which has applied the *de novo* standard.

Interestingly, in one of its decisions, the 9th Circuit Court wrote: “Why we review questions of relevance and undue burden *de novo* is unclear.” This quote seems to suggest that the 9th Circuit judges were not even sure why they had strayed from the other federal courts of appeals on this particular issue.

The Court confirmed that trial judges are better positioned than appellate judges to consider the variety of issues coming into play when the EEOC issues a subpoena seeking information for one of its investigations. The Court noted that these types of decisions will turn either on whether the evidence sought is relevant to the specific charge, or whether the subpoena is unduly burdensome. Further, the Court noted that such determinations are fact-intensive, close calls that fall neatly under the purview of trial court judges. Justice Sotomayor wrote that these decisions are not generally suited for broad *per se* rules, and that district courts have an “institutional advantage” in making these types of decisions.

In sum, the Court decided that unless evidence exists to show the trial court arbitrarily exercised its discretion or made a clear error in applying applicable law, the lower court judge’s decision should not be overturned.

### **What This Means For Employers**

Today’s decision favors employers in the 9th Circuit (those in California, Washington, Nevada, Oregon, Arizona, Montana, Idaho, Alaska, and Hawaii) by ensuring that lower court rulings on EEOC subpoenas will receive appropriate deference by appellate courts. It is also good news for employers across the country, ensuring that the overbroad standard taken by the 9th Circuit will not creep into other jurisdictions.

It is not unusual for employers to face EEOC requests for information far exceeding the scope of what is relevant for the charge at hand. An employer challenging a subpoena will, in nearly all cases, have a better chance of obtaining a favorable outcome from a trial judge who is intimately familiar with all facets of the case, including the parties and the facts. Today’s Supreme Court’s decision recognizes the unique qualifications that trial judges have for knowing and understanding the day-to-day details of a case, placing them in a better position to determine whether the EEOC’s requests for information are relevant or overbroad.

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